

Kentucky Commission on Small Business Advocacy Annual Report 2002



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Kentucky Commission on Small Business Advocacy

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The Commission on Small Business Advocacy is an independent agency attached to the Office of the Governor, pursuant to KRS 11.200 and KRS 11.202.

Kentucky Commission on Small Business Advocacy

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Dear Governor Patton and the Interim Joint Committee on Economic Development and Tourism:

The Kentucky Commission on Small Business Advocacy (KCSBA) was created by HB 588 in 2000 through the leadership of Representative Ruth Ann Palumbo and the Governor appointed the commission in May of 2001. The KCSBA is to **provide resources to help Kentucky small businesses navigate the regulatory environment** and **reduce the regulatory burdens**, and to be an advocate for small businesses in the legislative/regulatory process.

The legislature requires the KCSBA to **educate the small business community** on federal, state, and local government initiatives of value and importance; **aid the small business community in navigating the regulatory process** when that process becomes cumbersome, time consuming, and bewildering to the small business community; and **develop a system to inform the small business community of state legislation and administrative regulations** affecting it, both prior to its enactment and after its implementation.

Kentucky small businesses pay almost \$7,000 per employee to comply with federal regulations — this does not include state and local regulations. These small businesses are being **strangled by the more than \$9 billion dollars annually in regulatory compliance costs, spiraling double digit health insurance cost increases, a weak economy, uncertainty about war and the prospect of additional tax burdens to remedy the state's worst budget crisis in our lifetime.**

The KCSBA understands the importance of state agencies' fulfilling their statutory responsibilities. However, the KCSBA encourages state agencies to consider impacts on small businesses to ensure that their regulations do not have unintended anti-competitive consequences. It is KCSBA's duty to ask that agencies explore less burdensome alternatives that are equally or more effectively accomplish their objectives.

The KCSBA estimates that reducing the regulatory burdens on small businesses by just 5% would give those businesses an additional \$450 million to spend on additional employees, computers and business expansion, which **will generate additional sales and payroll taxes of \$30 million per year.**

The centerpiece of the KCSBA's advocacy efforts is a "**Small Business Internet Portal/Online Help Desk.**" The portal will provide small business owners 24/7 access to business development tools, compliance assistance information, and a formal process to report unfair enforcement actions by state regulators. The KCSBA wants to thank the Governor's Office and EMPOWER Kentucky for providing funding for the portal and keeping their commitment to help small businesses.

The KCSBA has accomplished a great deal in the first 20 months with very little resources, as you will see in this report. However, KCSBA has seen its funding cut in half and is struggling to continue to pay for two part-time staff. We need a full-time staff and there are zero dollars available for programming to accomplish our statutory responsibilities. State agency responses to a draft of this report shows that **some state agencies continue to resist changes that will reduce regulatory burdens and help small businesses succeed and grow.**

The KCSBA has recommended that criteria for state financial tax incentives programs be modified to give micro and very small businesses that want to double their workforce from 2 to 4 employees, access to the same programs available to larger business that can more realistically increase the number of employees by 10 or 15. The new criteria should also provide tax incentives to finance plant and equipment modernization that will increase productivity, increase efficiency and either save or create new jobs. The Economic Development Cabinet says in its response that if a business doesn't add 10-15 new employees and make a capital investment of \$100,000, then the business "**is not creating a sufficient economic impact to justify the foregoing of state and local tax revenues,**" even though two-thirds of the new net jobs are created by small businesses.

The Natural Resources and Environmental Protection Cabinet's regulations cost Kentucky small businesses more than \$2 billion each year. The Cabinet refuses to support legislation that is based on the Environmental Protection Agency (EPA) "Small Business Policy" which provides for the "waiver or reduction" of penalties for first-time offenders if the small business does not have a history of violations, and if the non-compliance does not pose an immediate threat to the environment. EPA reports that the **use of EPA's compliance policies has resulted in overall benefits to human health and the environment.** Kentuckians deserve these same benefits.

The KCSBA believes that the state's small businesses should have benefit of the same resources and advocacy that larger businesses have, helping them to compete and level the playing field. The KCSBA believes that men and women who own and operate small businesses in the state of Kentucky and make an honest mistake should be assisted by government regulators to correct the problems and not fined out of business. By providing adequate funding to the KCSBA, we can make Kentucky a more "**Small Business Friendly**" state. We welcome your comments, questions and suggestions as we move forward.

Sincerely,



Robert G. Clark, Chair

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**Kentucky Commission on Small Business Advocacy
2002 Annual Report**

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Executive Summary

In the United States, businesses must pay \$843 billion each year to comply with federal regulations and this doesn't count state and local regulatory compliance costs (See Appendix 10). In Kentucky, small business owners pay more than \$9.1 billion each year in federal regulatory compliance costs (See Appendix 6A). Too often, enforcement and compliance activities have bewildered, frustrated, and angered small business owners who struggle to comply.

There are approximately 22.4 million small businesses in the U.S. and an estimated 300,000 small businesses in Kentucky. Small businesses in the U.S.:

- Provide about two-thirds to three quarters of the net new jobs;
- Represent over 99% of all employers (97.1% in Kentucky);
- Represent 96% of all exporters of goods;
- Are 53% home-based and 3% franchises;
- Employ 51% of the private sector workers; ¹ and
- Small enterprises produce 55% of innovations. ²

In Kentucky, there are 82,267 small businesses with one to 100 employees, approximately 212,238 self-employed entrepreneurs and more than 82,000 farms for an estimated total of more than 300,000 small business entities. Women owned 23.4 percent of the state's firms in 1997 and generated \$9.9 billion in revenue. Minority-owned businesses total 12,700 or 18.9 percent of Kentucky firms. Small businesses employed 740,203 or 50.4% of the state's employees. Clearly, small business greatly impacts the economy nationally and in the Commonwealth.

During the first year and a half the Kentucky Commission on Small Business Advocacy (KCSBA) has worked to identify the problems facing small business in Kentucky, to create a plan of action to address the identified problems, and to increase awareness among Kentucky's small business owners of the KCSBA's commitment to their success.

Committed to reducing the burdens of time and expense navigating the regulatory and information processes, the KCSBA created an action plan that includes providing advocacy and informational resources. Responding to its findings, the commission has initiated a number of outreach activities, developed a list of recommendations, and moved forward with immediate actions to assist small business owners through advocacy and information. These actions require funding, and a critical issue facing the KCSBA is the lack of adequate funds to carry out the duties that the legislature requires by statute. KCSBA will address these issues in the 2003 General Assembly and will encourage the legislature to:

- Provide adequate funding to the KCSBA to carry out its statutory responsibilities;
- Develop coalitions state wide to address health care issues affecting small businesses and provide input to legislation impacting small business health care plans;
- Provide tax incentives to very small (11-100 employees) and micro (1-10 employees) businesses;
- Require state agencies to have a "Small Business Policy" that waives or reduces penalties under appropriate circumstances; and
- Amend KRS Chapter 13A to require state agencies to assess the regulatory impact that proposed regulations will have on small businesses.

This report provides extensive appendices detailing information on and activities of the KCSBA as well as supplemental information on the federal initiatives to reduce regulatory burdens and to advocate on behalf of small business owners. This supplemental information is included in the annual report to illustrate the initiatives on the federal level that serve as models for KCSBA. Additional information is available on the KCSBA website.

As we move ahead into 2003, we look forward to working with the current Administration in Frankfort, the Legislature and the small business community to address the issues outlined in this report, and to make the KCSBA a national model for state programs with quantifiable results.

¹ <http://www.sba.gov/advo/stats/sbfaq.pdf>

² <http://www.sbosc.org/Media/pdf/SBSI2001.pdf>

Introduction

In 2000, the Kentucky General Assembly passed House Bill 588 creating an independent agency attached to the Governor's Office called the Kentucky Commission on Small Business Advocacy (KCSBA) (See Appendix 2). The KCSBA's structure is based on a combination of the duties of the Office of Advocacy and the Office of National Ombudsman (See Appendix 12). On May 11, 2001, the Governor made it official and the KCSBA was appointed. The KCSBA consists of 27 small business owners and four Cabinet Secretaries appointed by the Governor for a total of 32 members (See Appendix 1). The KCSBA's primary responsibility is to ensure that the vital interests of small businesses in Kentucky are represented effectively at the state government level and help small business owners navigate the complex, costly and frustrating regulatory environment.³

The genesis for HB 588 began in 1998 when Representative Ruth Ann Palumbo introduced HB 780, which created a Subcommittee on Small Business Regulation. Representative Palumbo introduced this legislation after discussions with current chair Robert G. "Bobby" Clark who serves as a Region IV Regulatory Fairness Board member (formerly chair and vice chair) and on the US Small Business Administration's National Advisory Council.

The KCSBA defines small businesses as follows: businesses with 1 – 10 employees are termed a micro business; businesses with 11 – 100 employees are termed a very small business; and businesses from 101 to 500 are termed simply small businesses. The Small Business Administration defines a small business as one with less than 500 employees, however, the Commission felt it necessary to further clarify the definition for our purposes. Most state financial assistance and tax incentives programs are available only to businesses with over 50 to 500 employees.

During the interim, the Subcommittee on Small Business Regulation heard testimony from small business owners, business associations and trade groups. The Subcommittee also conducted a comprehensive study of Small Businesses and a survey of professional associations and chambers of commerce across the state.⁴ The survey confirmed that general bureaucracy such as red tape, excessive regulation, excessive paperwork and complex regulatory language was a problem and regulatory relief is needed. KCSBA, in accordance with its statutory responsibilities, is required to address three primary program areas:

- **Marketing and Outreach** - KRS 11.200 (2)(c) - Coordinate and educate the small business community on federal, state, and local government initiatives of value and importance;
- **Small Business Advocate** - KRS 11.200 (2)(e) - Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community. KRS 11.200 (2)(f) - Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.
- **Serve as the primary clearinghouse and communication outlet for the small business community** - KRS 11.200 (2)(d) - Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector. KRS 11.202 (1)(b) - Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation.

Pursuant to KRS 11.202, the KCSBA must submit a report to the Governor and the Interim Joint Committee on Economic Development and Tourism each year detailing its work in the prior fiscal year, including, but not limited to the following:

- Activities and achievements of the KCSBA in accomplishing its purposes and duties;
- Findings of the KCSBA related to its collection of information and research on public policies and government practices affecting small businesses, including specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and
- Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.

This report complies with those directives by providing the KCSBA findings on public policies affecting small businesses and by making specific recommendations of ways state government can better promote economic development.

³ <http://smallbusiness.state.ky.us>

⁴ <http://smallbusiness.state.ky.us/docs/SmallBizTaskForce.pdf>

Small Business Portal/Online Help Desk

KCSBA developed a plan and a Request for Proposal (RFP) for the Small Business Portal/Help Desk (See Appendix 4). The portal, due online in 2003, is the centerpiece of the commission's advocacy program, which will provide small business owners 24/7 access to business development tools, compliance assistance information, and a formal process to report unfair enforcement actions by state regulators.

Due to the sheer size of our constituency, limited staff and voluminous information, it would be impossible to carry out our statutory responsibilities without using the Small Business Portal/Online Help Desk as the primary means of communication. A single mailing to the small business community could cost in excess of \$150,000.

The Small Business Portal/Online Help Desk will be managed by KCSBA's Small Business Advocate who will provide critical business information to all small businesses and the portal can also be utilized by every state agency that regulates small businesses. EMPOWER Kentucky has awarded a \$100,000 technology grant to pay for initial start-up costs of the portal.

The **Small Business Portal/Online Help Desk** includes:

- A **Case Management and Tracking System** for complaints and requests for information;
- A **Member Classification System** — notices of proposed regulations can be sent to targeted affected businesses for feedback on the Regulatory Impact;
- An **Event Calendar** that can be accessed by the portal administrator and other state agencies;
- Forums, virtual meetings and real-time chat capabilities;
- A **Small Business Resource Library**; and
- Links to **federal, state and local online resources** for small businesses.

Testimony before legislative committees representing the interests of small business

Since its creation, the KCSBA has testified numerous times before legislative committees. The KCSBA endorsed three bills in the 2002 session of the General Assembly. HB 810 expanded the KCSBA by five members. This legislation added a member under thirty years of age, and a representative nominated by the Kentucky Farm Bureau, Kentucky Coal Council, Kentucky Home Builders Association and the Kentucky Association of Realtors.

A widespread small business outreach program

Among KCSBA's accomplishments was the creation of a slogan "Helping Small Businesses Navigate Kentucky's Regulatory Environment" and launch the marketing and outreach campaign for the KCSBA and the Small Business Portal and Online Help Desk. Exhibitions included the Greater Lexington Chamber Business Trade Show, Women Leading Kentucky Conference, Doing Business in the New Economy Conference, among others.

On January 17, 2002, the KCSBA also hosted a small business forum and a small business roundtable featuring the U.S. National Ombudsman Michael L. Barrera. Small business owners at each of these events spoke about their problems with federal and state regulators. Ombudsman Barrera praised Kentucky as a national leader in small business advocacy, Bill Federhofer, District Director of the SBA Kentucky District Office, was presented with a certificate acknowledging the Regulatory Roundtable held in Kentucky on January 17, 2002 as the fiscal year 2002 best overall trip which encompassed media, attendance at hearing and meetings with government officials. Mr. Federhofer was recognized by the SBA Office of the National Ombudsman at the SBA National Management Conference held in San Diego in November (See Appendix 3 for KCSBA Activities Timeline).

Identification of the issues of concern to small businesses in the state

On August 1, 2002, the KCSBA held an Issue Group Work Session in Northern Kentucky, facilitated by KCSBA member Teri-Bonar Stewart, to solicit comments and identify issues for this annual report. Attending the work sessions were Senators Katie Stine and Virgil Moore; Larry Maggard, Associated Industries of Kentucky; Rusty Cress, Chemical Industry Council; and Greg Copely, Kentucky Business Environmental Assistance Program (KBEAP). Small business owners and KCSBA members brain-stormed issues and ranked the issues in order of importance. Issues discussed were:

- Adequate Funding
- Health Insurance
- Property Taxes on Intangibles and Inventory
- State Financial Incentives for Small Business
- Reduction and Waiver of Civil Penalties
- Enterprise Zones
- Regulatory Impact Analysis
- Occupational License Taxes and Filings
- National Small Business Regulatory Assistance Act
- Open Meetings Laws
- Kentucky Adoption of National EPA Regulations

RECOMMENDATION 1 - Adequate Funding

Adequate funding is essential to the mission of the KCSBA. The KCSBA received \$150,000 for fiscal year 03 and 04 (\$75,000 each year). The KCSBA recommends an increase to \$550,000 for fiscal year 04 and this budget level should extend as a minimum level of funding for fiscal years 05 and 06. The KCSBA needs its own full-time staff to carryout the duties with which it has been charged. (See Appendix 5)

ISSUE 1

KCSBA's current budget is 50% less than the first biennium. The commission will not be able to fulfill its mission of advocacy, portal development and marketing activities without funds. Nor will it have the ability to employ the staff necessary to accomplish these goals. KCSBA needs the following full-time staff: Chief Executive Officer (CEO); Small Business Advocate; and a representative to reach out to the small business community and other contract staff as necessary.

RECOMMENDATION 2 - Health Insurance

Small businesses are experiencing a crisis in health care. The KCSBA recommends the development of coalitions state-wide to address health care issues and ensure that all small businesses can be a part of larger plans, and have a seat at the table with respect to all issues impacting small business health care plans. (See Appendix 8)

ISSUE 2

In the era of escalating health care costs and shrinking coverage options, small businesses have been the hardest hit of all businesses. On their own, small businesses lack the numbers to assure competitive rates, many lack access to group plans, and currently self-insurance is rarely an option. This impacts not only the existing workforces of small business, but these businesses' ability to recruit and retain qualified workers.

RECOMMENDATION 3 - Property Taxes on Intangibles and Inventory

Many small businesses are subject to burdensome intangible property taxes that are not strong revenue producers for the state. The KCSBA recommends the passage of legislation to abolish the Intangible & Inventories Taxes when it becomes fiscally feasible or as a part of comprehensive tax reform. (See Appendix 9)

ISSUE 3

The property tax on intangibles subjects items such as accounts receivable, bonds, notes and credits to a state rate only of 25 cents per \$100 of assessment. The state is currently collecting approximately \$27 million per year from the tax on intangibles. The property tax on inventory subjects goods held for sale and finished goods to a state rate of five cents and to full local rates.

The Commonwealth is currently collecting about \$5.5 million per year and local taxing jurisdictions about \$71 million per year from the tax on inventory. Compliance with each of these taxes is burdensome and expensive for small businesses. The tax on inventory is especially burdensome in that inventory which may never be sold and may have little market value is taxed. In fact, a small business can lose money in a particular year, but must still pay tax on its inventory. The property taxes on intangibles and inventory should be abolished at the earliest date that the Commonwealth can afford to do so.

RECOMMENDATION 4 - State Financial Incentives for Small Business

Most small businesses with fewer than 20 employees cannot meet the minimum threshold of 10-15 new employees to qualify for financial incentives and they need the same assistance afforded other businesses. The success or failure of a small business is not necessarily determined by the size or growth of its workforce. There are a number of small businesses in the state that have operated successfully for many years, contributing to both the tax base and Kentucky's workforce and cannot meet the criteria that the legislature has set for the Cabinet for Economic Development to provide financial incentives. In addition, the bulk of the financial incentives are in the form of tax incentives, providing little assistance to start-up businesses that have yet to earn a profit. The KCSBA recommends passage of legislation that would require the Economic Development Cabinet to establish a financial incentives program for very small businesses (fewer than 20 employees) that establishes a goal of qualifying 10% of the total number of companies approved for financial incentives within two years and 25% within five years. The criteria should not be solely based on increased employment but should include:

- an increase in efficiency which is expected to increase profits;
- a percentage of current employees as criteria as opposed to the number of new jobs created; and
- an increase in production capabilities making the organization more efficient resulting in saving jobs or increasing profits.

ISSUE 4

Small businesses generate approximately 75% of new net jobs, represent 99% of all employers, employ 51% of the private workforce and generate 51% of the private sector output. The current statutory authority limits financial incentives to small businesses by focusing on a criteria requiring an increase in employment by a minimum of 10-15 employees over a two year period, something not feasible and not in their business plan. Many small businesses may never set a goal to grow their business beyond a small number of employees and are not eligible for state financial incentives. Focusing solely on the number of new jobs created eliminates a number of small businesses providing employment, services and products to Kentuckians and revenue to Kentucky's tax base. (See Appendix 9.)

RECOMMENDATION 5 - Reduction and Waiver of Civil Penalties

Many small business owners are simply unaware that certain actions violate administrative regulations/statutes. The KCSBA recommends passage of legislation that would require all state agencies that regulate small businesses and have the authority to assess civil penalties to adopt administrative regulations that would provide for the reduction or the waiver of civil penalties, under appropriate circumstances, for a small business entity with fewer than 100 employees. In addition, the Legislature should require state agencies to issue a pre-notice of violation to small businesses and allow a reasonable time for corrections to be made prior to issuing a Notice of Violation (NOV). (See Appendix 13)

ISSUE 5

The Small Business Regulatory Enforcement Fairness Act (SBREFA)⁵ requires all federal agencies that regulate small businesses to have a "waiver & reduction" of penalty policy. Small business owners that inadvertently violate an administrative regulation or statute should not be penalized unless the violation poses a serious health, safety or environmental threat. Small businesses should receive a pre-notice of violation and a reasonable time to correct the problem.

The Commission acknowledges that environmental regulations are put in place to provide health benefits to society and to protect Kentucky's natural resources. This policy would not apply to habitual violators or if the violation posed a serious health, safety or environmental threat. The bill would also require agencies to provide small business entities with reasonable time to correct the violation before receiving a notice of violation.

A NOV can increase the cost of insurance and can impact the stock price or valuation of a company. A pre-notice will encourage businesses to fix problems on a timely basis and allow the company to continue its focus on compliance and not adversarial confrontations requiring attorneys. The most valuable and limited resource of any small business is his/her time.

⁵ www.sba.gov/advo/laws/sbrefa.html

RECOMMENDATION 6 - Enterprise Zones

In certain economically depressed areas in the state, state and local tax incentives are offered to encourage new or renewed development. The KCSBA recommends passage of legislation that extends the Enterprise Zone tax incentives program. (See Appendix 9)

ISSUE 6

Enterprise Zones for economically depressed areas were created by the legislature in 1982 to promote economic development. In addition to state and local tax incentives, these zones are strategically located and participants have access to space and land for development. Ten zones were created, however there are expiration dates on these zones running from December of 2003 (Louisville and Hickman) through December of 2008.⁶

RECOMMENDATION 7 - Regulatory Impact Analysis

Small business can be unduly burdened by new regulations or changes to existing regulations. The KCSBA recommends passage of legislation that specifically requires the inclusion of a Regulatory Impact Analysis to assess the impact of changes to new or existing regulations on very small and micro small businesses with fewer than 100 employees. Changes in Kentucky law should include recommendations in The Small Business Friendly Regulation Model Legislation for States⁷, which is based on the Regulatory Flexibility Act (RFA) and gives small businesses a more level playing field. (See Appendix 6)

ISSUE 7

KRS 13A.240 requires agencies to prepare a regulatory impact analysis on new or proposed changes in administrative regulations. This statute does not specifically assess the impact on small businesses. An SBA Report, "Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses"⁸, published June 2002, was critical of Kentucky's process of addressing concerns of small businesses in the rule-making process.

RECOMMENDATION 8 - Occupational License Taxes and Filings

Many small businesses are subject to multiple occupational license taxes and filings. The KCSBA recommends legislation that requires multiple taxing districts within a county to standardize its occupation license tax fees and returns, to encourage Inter-local Agreements for a single source tax collection for occupational licenses taxes, and to have one form per county. (See Appendix 9)

ISSUE 8

The current structure of collecting occupational license fees and taxes in Northern Kentucky places a tremendous burden on the business community. A taxpayer with business dealings in all the counties and cities of Northern Kentucky has to file 16 different occupational license renewal and tax forms a year. Individuals and companies are faced with the burden of comprehending and completing 16 different forms which have four different due dates. The different forms and different due dates makes it difficult for taxpayers to comply with occupational license ordinances. Administering these taxes by multiple jurisdictions is duplicative, costly and inefficient. Many small business owners are not aware of their obligations. There is also an issue of equal enforcement. For example, small businesses such as realtors that put their sign up in a neighborhood are asked to pay the tax, while other businesses that sell insurance or newspapers are not forced to pay because it is not as easy to identify their business activity within a city taxing district.

⁶ <http://www.sba.gov/advo/research/rs219tot.pdf>

⁷ http://www.sba.gov/advo/laws/law_state02_12.pdf

⁸ www.edc.state.ky.us/kyedc/enterzone.asp

RECOMMENDATION 9 - National Small Business Regulatory Assistance Act

Many small businesses do not have the knowledge or the expertise to correctly address regulatory issues. The KCSBA recommends passage by Congress of the National Small Business Regulatory Assistance Act of 2002.

ISSUE 9

The National Small Business Regulatory Assistance Act of 2002⁹ directs the Administrator of the Small Business Administration (SBA) to establish a pilot program to provide regulatory compliance assistance to small businesses through participating Small Business Development Centers (Centers). It requires the Administrator to enter into arrangements with participating Centers to provide: (1) access to regulatory information and resources; (2) training and education activities; (3) confidential counseling to owners and operators of small businesses regarding compliance with Federal regulations; (4) technical assistance; and (5) partnerships with Federal compliance programs. It also provides privacy requirements applicable to Centers, a consortium of Centers, or any Center contractor or agent with respect to regulatory compliance assistance provided to small businesses.

RECOMMENDATION 10 - Open Meetings Laws

Many commissions serving the state are made up of individuals from across the Commonwealth, making a physical presence at regular board meetings a hardship. The KCSBA recommends passage of legislation to amend Kentucky's Open Meeting Laws¹⁰ to allow members of statewide commissions to have full participation in commission meetings by telephone, including voting and for purposes of a quorum. The KCSBA recognizes that a speakerphone should be available at the actual meeting site so the public and media can hear members participating from another location.

ISSUE 10

Current Kentucky law regarding "Open Meetings" by public agencies does not allow members of a public agency (board, commission or committee) to conduct meetings via telephone conference calls. Recent Attorney General Opinion 02-OMD-206 prohibits members to vote or be counted towards a quorum if the member uses a telephone to participate by speakerphone. The law allows for videoconferencing because the public and the media can "see" and "hear" the members of a public agency.

This puts a significant hardship on statewide boards and commissions that have members spread out across the state. A member that lives in Paducah or Pikeville, for example, will have to travel almost eight hours to participate in a meeting, and videoconferencing is not always an option - being unavailable or too costly. The current state law also restricts public agencies from polling its members via email to conduct routine business. Changes in technology in the last decade have changed substantially the way people communicate and conduct business. Teleconferencing has become a commonly accepted form of meetings nationally. The KCSBA recognizes and supports the premise that the public and the media have a right to access to the conducting of public business, but also recognizes the need for updates in the law to reflect the changing way the world conducts business.

⁹ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:s2483rs.txt.pdf

¹⁰ <http://www.law.state.ky.us/civil/OR-OM%20Outline.pdf>

RECOMMENDATION 11 - Kentucky Adoption of National EPA Regulations

The United States Environmental Protection Agency has developed small business compliance plans. The KCSBA recommends that the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) follow EPA's lead and adopt administrative regulations or support legislation consistent with EPA's model. (See Appendix 13)

ISSUE 11

The Environmental Protection Agency (EPA) delegates almost all of its enforcement and compliance activities to the Natural Resources & Environmental Protection Cabinet in Kentucky. EPA also delegates the same authority to other states in varying degrees and each state is different. In some states, EPA retains its enforcement and compliance authority in certain areas.

The Small Business Regulatory Fairness Enforcement Act (SBREFA) requires all federal agencies to have a small business policy regarding the "waiver and reduction" of penalties. EPA has a small business policy but this policy does not apply because Kentucky's environmental laws are enforced at the state level. This puts Kentucky small businesses at a competitive disadvantage as compared to other small businesses in some states that are regulated directly by EPA on some environmental laws and regulations.

The use of the EPA's Compliance Policies has resulted in overall benefits to human health and the environment. When companies voluntarily detect and correct violations in order to take advantage of the Policy, they remove harmful pollutants from our air, ground and waterways, reduce the likelihood of chemical spills and accidental releases, improve public information regarding potential environmental hazards, and ensure safe management of hazardous chemicals and wastes.

Kentucky Commission on Small Business Advocacy Commission Members Original Commission - May 11, 2002

Commission Members:

1. Governor Paul E. Patton
2. James E. Bickford, Natural Resources & Environmental Protection
3. James C. Codell, Transportation Cabinet
4. Mike Haydon, Revenue Cabinet
5. Marvin E. Strong, Economic Development Cabinet
6. Becky Naugle, Kentucky Small Business Development Center
7. Sheila Bayes, Lexington Chapter of the National Association of Women Business Owners (NAWBO)
8. Arthur Byrn, City of the 3rd Class
9. Barbara D. Bonar, Northern Kentucky-Greater Cincinnati Chapter of (NAWBO)
10. Robert G. Clark, Associated Industries of Kentucky
11. Janet Holloway, Greater Lexington Chamber of Commerce
12. Sandy Jones, City of the 2nd Class
13. Jennifer Marsh, Bowling Green Chapter of NAWBO
14. Jacquelyn Markham, City of the 5th Class
15. Glenn McCarty, National Federation of Independent Business
16. Stephen D. Merrick, Center for Rural Development
17. Gwen Parrott, Louisville Chapter of (NAWBO)
18. Jim Rives, Greater Louisville, Inc.
19. Lalit K. Sarin, City of the 4th Class
20. Terri Bonar-Sewart, Northern Kentucky Chamber of Commerce
21. William H. Stone, Kentuckiana Minority Supplier Development Council
22. Alan C. Taylor, Henderson County Chamber of Commerce
23. Norma Taylor, Professional Women's Forum
24. Marjo Vancil, Kentucky Retail Federation
25. Cindi L. Ward, Kentucky Federation of Business & Professional Women's Club, Inc.
26. Jared S. Watson, Community Ventures
27. David W. Young, Kentucky Chamber of Commerce

- **HB 810 – Passed in 2001 Kentucky General Assembly and became law created five new commission members (See page 17).**

HB 588 created the Kentucky Commission on Small Business Advocacy (KCSBA)

The KCSBA was created by House Bill 588 in the 2000 General Assembly.

KRS 11.200. Commission on Small Business Advocacy - Purpose - Membership - Meetings - Executive Director

- (1) There is created the KCSBA on Small Business Advocacy. The KCSBA shall be a separate administrative body of state government within the meaning of KRS 12.010(8).
- (2) It shall be the purpose of the KCSBA on Small Business Advocacy to:
 - (a) Address matters of small business as it relates to government affairs;
 - (b) Promote a cooperative and constructive relationship between state agencies and the small business community to ensure coordination and implementation of statewide strategies that benefit small business in the Commonwealth;
 - (c) Coordinate and educate the small business community of federal, state, and local government initiatives of value and importance to the small business community;
 - (d) Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector;
 - (e) Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community; and
 - (f) Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.

KRS 11.202. Duties of Commission on Small Business Advocacy

- (1) The duties of the KCSBA on Small Business Advocacy shall include, but not be limited to:
 - (a) Coordinate and promote the awareness of the Federal Small Business Regulatory Enforcement Fairness Act of 1996, and its subsequent amendments within the small business community of the Commonwealth;
 - (b) Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;
 - (c) Advocate for the small business sectors when state legislation and administrative regulations are overly burdensome, costly, or harmful to the success and growth of the sector; and
 - (d) Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community.
- (2) By September 1 of each year, the commission shall submit a report to the Governor and the Interim Joint Committee on Economic Development and Tourism detailing its work in the prior fiscal year, including, but not limited to the following:
 - (a) Activities and achievements of the commission in accomplishing its purposes and duties;
 - (b) Findings of the commission related to its collection of information and research on public policies and government practices affecting small businesses, including specific legislation and administrative regulations that are helpful or detrimental to the success of small businesses; and
 - (c) Specific recommendations of ways state government could better promote the economic development efforts of small businesses in the Commonwealth.

House Bill 588 was also specific in terms of its membership. It states:

The KCSBA on Small Business Advocacy shall consist of twenty-seven (27) members:

- (a) The Governor, or the Governor's designee;
- (b) The secretaries of the following cabinets, or their designees:
 - Economic Development;
 - Natural Resources and Environmental Protection;
 - Revenue; and
 - Transportation;
- (c) The state director of the Small Business Development Centers in Kentucky;
- (d) One (1) representative of each of the following organizations, appointed by the Governor from a list of three (3) nominees submitted by the governing bodies of each organization:
 - Associated Industries of Kentucky;
 - National Federation of Independent Business;
 - Kentucky Chamber of Commerce;
 - Kentucky Federation of Business and Professional Women's Club, Inc.
 - Kentucky Retail Federation;
 - Professional Women's Forum;
 - Kentuckiana Minority Supplier Development Council;
 - Greater Lexington Chamber of Commerce
 - Lexington chapter of the National Association of Women Business Owners;
 - Greater Louisville, Inc.;
 - Louisville chapter of the National Association of Women Business Owners;
 - Northern Kentucky Chamber of Commerce, Inc.;
 - Northern Kentucky - Greater Cincinnati chapter of the National Association of Women Business Owners; and
 - Bowling Green chapter of the National Association of Women Business Owners;
 - Henderson - Henderson County Chamber of Commerce;

One (1) representative from small business from each of the following areas, appointed by the Governor:

- A city of the second class;
- A city of the third class;
- A city of the fourth class; and
- A city of the fifth class; and

One (1) representative who is a small business owner served by each of the following organizations, appointed by the Governor:

- The Center for Rural Development; and Community Ventures Corporation.

However, during the 2002 General Assembly the membership was increased and KCSBA now has representation from the following organizations:

- Kentucky Association of Realtors (replaces Bowling Green chapter of the National Association of Women Business Owners which no longer exist);
- Kentucky Coal Council;
- Kentucky Farm Bureau Federation;
- Kentucky Homebuilders Association;
- One (1) representative who is a small business owner under the age of thirty-five (35), appointed by the Governor

KCSBA Activities Timeline

September 2000 through December 31, 2002

July 2000 - KCSBA established by HB 588. HB 502 provides \$300,000 for the biennium in General Funds for the CSBA as Community Development Project #659 (p. 212, lines 23-24).

August 2000 – Betsy Nowland-Curry appointed as CEO of KCSBA and Executive Director of the Kentucky Commission on Women (KCW).

December 2000 – KCSBA moved to 404 Ann Street and hired one part-time staff person.

March 2001 – Informed that KCSBA and KCW would have to move again.

May 2001 – Governor made appointments to the KCSBA Board and held first board meeting.

June 2001 – update request from House and Senate Economic Development Committee. Betsy Nowland-Curry and Bobby Clark, Board Chair, represented KCSBA.

June 2001 – Exhibited at the Greater Lexington Chamber Business Trade Show; Attended and made presentation at induction ceremony of the Lexington Chapter of NAWBO; Presentation to the Joint Committee on Economic Development and Tourism; and Moderator and panel participant of the Lexington NAWBO Business Forum.

July 2001 – Participated with the Lexington Chamber regarding a feasibility study; Attended Doing Business in the New Economy Conference and held second KCSBA Board Meeting.

September 2001 - KCSBA office relocated for the second time in less than one year; Exhibited at the Women Leading Kentucky Conference.

October 2001 – Attend Women's Enterprise Institute, Midway College, Board Meeting.

November 2001 – KCSBA third Board Meeting.

January 2002 – Hosted Michael Barerra, National Small Business Administration Ombudsman during his visit to Kentucky; Held breakfast forum for Kentucky small businesses with Ombudsman Barrera as the main speaker; Held Regulatory Roundtable where Kentucky small businesses throughout the state of Kentucky could meet with Ombudsman Barerra; Betsy Nowland-Curry, Bobby Clark (Board Chair), and National Ombudsman Barerra gave a presentation to the House Economic Development Committee; Fourth KCSBA Board Meeting; Contacted by press office liaison from the National Ombudsman's office in Washington, D.C. to coordinate linking their website to KCSBA's website; Attend Women's Enterprise Institute, Midway College, Board Meeting and Attended Business Lobbyist Caucus.

February – March 2002 – Testified on behalf of Small Businesses on proposed legislation. Attended weekly Business Lobbyist Caucus; met with Secretary Crit Luallen regarding budget; met with Secretary Crit Luallen and Representative Ruth Ann Palumbo regarding funding issues.

April 2002 – Fifth KCSBA Board Meeting.

June 2002 – Exhibited at the Business to Business Conference.

August 2002 – KCSBA Issue Group Work Session held in Northern Kentucky; sixth KCSBA Board Meeting; Exhibited at the Women Mean Business Conference; and Presentation to the Joint Committee on Economic Development and Tourism.

September 2002 – Exhibited at the Women Leading Kentucky Conference.

October 2002 - Presentation to the Joint Committee on Economic Development and Tourism.

November 2002 – Held 7th KCSBA Board Meeting; Made presentation to the Associated Industries of Kentucky Board Meeting.

Helping Small Businesses: Small Business Portal/Online Help Desk

Overview of Portal Project

The central focus of the KCSBA's efforts will be the establishment of a Small Business Portal/Online Help Desk. This will provide Kentucky small business owners with a virtual "self-service help desk" which links them to federal, State and local government agencies and other on-line resources 24 hours a day. The Small Business Portal/Online Help Desk will provide a single source for critical business information to all small businesses. The KCSBA will manage and administer this system.

The Small Business Portal/Online Help Desk will be effectively marketed to small businesses and organizations serving small businesses to ensure that all are aware of the help available. Commission members report that while there are a number of programs that provide assistance to small businesses, many small business owners are unaware of their existence.

The Small Business Portal/Online Help Desk will provide critical business information to all small businesses. The KCSBA and other state agencies (that regulate or provide resources or services to small businesses) will be able to post any type of file from Word documents and articles to video clips and graphics.

The Small Business Portal/Online Help Desk will be organized in issue-specific folders that contain key documents to help small businesses learn how to manage and grow their business. All of these folders are permissions-based, allowing the KCSBA to decide who has access to what information. Each state agency will have control over their area of the Small Business Portal/Online Help Desk. The Small Business Advocate will be responsible for the overall management of the Small Business Portal/Online Help Desk. The portal will also provide a direct agency referral to a small business that needs consulting or direction.

Components of the Small Business Portal/Online Help Desk

Case Tracking and Referral System

A key element of the Small Business Portal/Online Help Desk will be a simple-to-use Case Tracking and Referral System that can assist the KCSBA in managing issues or complaints that small businesses may have regarding the operation of their business. For example, a small business that questions their taxes can use the convenient tracking system to get a question answered. Acting as an intermediary, the Small Business Advocate can route and manage the feedback process for this particular small business' complaint or issue.

Once the Small Business Advocate has identified the complaint and how it should be routed, she will "assign" the completed document to a specific link that will display the complaint to the identified cabinet representative. The cabinet representative will be notified that they have a new complaint in the same way that the Small Business Advocate was notified: via email or icon next to their folder.

The proposed Small Business Portal/Online Help Desk will have reporting capabilities such as viewing complaints by tracking number, company/person filing the complaint, to whom the complaint was forwarded, when the complaint was forwarded, status of the incident, etc. This will help the Small Business Advocate manage multiple complaints by being able to view those complaints that are pending and those that have been resolved. As complaints are resolved, the status of the incident will change, reflecting completion. Email notification will be sent to all involved parties announcing resolution of the issue. Resolved incidents will be removed from the active list but will be archived for future access.

A series of forms will be developed that are specific to a particular cabinet or business issue. By clicking on the appropriate link it will display the form for the business making the complaint. Our Small Business Portal/Online Help Desk requires a secure login so the name, address, telephone number and email address of the issuer will automatically populate the form. A tracking number is assigned by the system to reference the incident. This tracking number will refer to the current incident only. Once the business has completed the form, they will submit it online.

The Small Business Portal/Online Help Desk will provide folders for the representative responsible in each cabinet. Small businesses will also be assigned a user ID and password that will give them access to their folder.

Online Forums

The Small Business Portal/Online Help Desk will also host forums that are threaded discussion boards allowing small businesses to post and share information. The forums will be permissions-based, giving the KCSBA the ability to define who will participate in particular discussions.

Forums can also be established to give state agencies and regulators an opportunity to interact with small businesses electronically and discuss compliance issues or simply listen to small business concerns.

Data Collection and Information Distribution

The Small Business Portal/Online Help Desk will also collect important demographics and data about each small business, such as name, and address plus identifiers such as type of business and the types of regulations that have a direct impact on their business. The Small Business Advocate will be able to query and identify businesses that will be impacted by a proposed regulation or statute.

Our Small Business Portal/Online Help Desk will host a master calendar to publish important events. The KCSBA and other state agencies can post their own small business events such as free compliance assistance, tax seminars, training opportunities, etc.

The KCSBA, along with other state agencies that regulate or provide resources and services to small businesses will be able to post any type of file to the Small Business Portal/Online Help Desk (e.g., Word documents, articles, video clips, and graphics). The self-service aspect and the 24-hour availability will make this an effective tool for state agencies to educate and communicate with small business owners in the Commonwealth.

A Request for Proposal (RFP) has been issued to invite proposals for secure hosting services, portal services, and consulting/application configuration services. The Small Business Portal/Online Help Desk should be designed to allow the KCSBA to continually integrate more services into the Small Business Portal/Online Help Desk. The vendor should build a technological framework with enough capacity and flexibility to meet the current and future needs of the KCSBA.

The portal concept is based on Greater Louisville Inc.'s new on-line small business help desk¹¹ and connects small business owners to the resources they need to make their business more successful. On this site, small business owners find: articles; web site links; threaded discussions with other CEOs; business experts and mentors; spotlights on other successful small companies; and the ability to keep up with headline news and monitor stocks - all in one place - 24 hours a day, 7 days a week.

¹¹ www.greaterlouisville.com/inctank/

Appendix 4 - Helping Small Businesses: Small Business Portal/Online Help Desk - continued



Benefits to the Commonwealth of Kentucky

The Small Business Portal/Online Help Desk will provide a significant return on investment to the Commonwealth.

- The Small Business Portal/Online Help Desk can be used to promote other state e-government initiatives. For example, the Revenue Cabinet can encourage small businesses to file their corporate or partnership tax returns or to remit sales & unemployment taxes electronically. Electronic filing provides a convenience to small businesses and can result in higher customer satisfaction. Electronic filings will, in turn, reduce the Revenue Cabinet's cost of processing tax returns and payments;
- All participating state agencies offering educational seminars can promote them through the Small Business Portal/Online Help Desk, saving time and postage;
- State agencies can also offer online educational assistance programs, saving travel time and expenses for everyone involved;
- Resolving problems before they become adversarial, possibly requiring attorneys on both sides, will save the Commonwealth and the small business money, thus improving customer satisfaction;
- The Small Business Portal/Online Help Desk can provide state agencies with a cost-effective way to comply with the requirements of KRS 13A.240 - Regulatory Impact Analysis. This statute currently requires state agencies that propose new administrative regulations, or changes to existing regulations, to:
 - Determine the type and number of individuals, businesses, organizations and state and local governments affected by the administrative regulation; and
 - Provide an assessment of how the affected groups will be impacted;

The agencies could send notices to small businesses electronically through the Small Business Portal/Online Help Desk, advising them on proposed or new regulations. The KCSBA could then solicit their estimates of the regulatory impact on the businesses and industries. Getting feedback on the front end of the policy-making process will save the Commonwealth and small businesses money. Customer satisfaction will greatly improve if businesses have the ability to be heard or advised of proposed changes before they occur.

Appendix 4 - Helping Small Businesses: Small Business Portal/Online Help Desk - continued

The KCSBA represents all Kentucky small businesses but plans to put a special emphasis on Kentucky farmers and agriculture related businesses. Farm families are all small business owners and are heavily regulated with annual federal regulatory compliance costs estimated at more than \$350 million. The Small Business Portal/Online Help Desk can not only host agricultural development resources but could have an extensive library of small business development resources that can help farm families diversify.

The Small Business Portal/Online Help Desk is good business practice, good government, and good for the businesses of the Commonwealth.

What will the Portal do For Small Business?

The KCSBA and other state agencies regulate, or provide resources and services to small businesses. The Small Business Portal/Online Help Desk will provide critical business information to all small businesses. It will also provide a direct agency referral to a small business that needs consulting or direction. The Small Business Portal/Online Help Desk should enable all members to post files such as Microsoft Word documents, video clips, and graphics. This feature should allow the KCSBA to develop news stories quickly by typing and posting to the Small Business Portal/Online Help Desk or by copying, including graphics, from an existing document.

State agencies that regulate small businesses must be able manage their content area for resources targeted to small business owners. The KCSBA and members should be allowed to share and collaborate on documents. The Small Business Portal/Online Help Desk will provide features to search for documents, resources, and past questions and answers.

The Small Business Portal/Online Help Desk will be organized in issue-specific folders that contain key documents to help small businesses learn how to manage and grow their business. Established folders should contain descriptions and web links. The Small Business Portal/Online Help Desk should be flexible enough to establish multiple categories of folders that contain small-business-specific resources. All folders should be permissions-based, allowing the KCSBA to decide who has access to what information.

The KCSBA will be responsible for the overall management of the Small Business Portal/Online Help Desk, but each state agency will have control over their area of the Small Business Portal/Online Help Desk.

The portal will have many features to assist small business and help the KCSBA manages complaints and requests for information.

Interactive Communications

Small businesses have limited time and staff resources and it is often impossible for owners or employees to communicate with state agencies during normal business hours. Due to the constraints of these limited resources, small businesses also have difficulty attending needed training seminars, etc. The Small Business Portal/Online Help Desk will allow small businesses to get the information they need, twenty-four hours a day.

The Small Business Portal/Online Help Desk will host forums and have threaded discussion boards that allow small business owners and their employees to post and share information. The forums will be established to give state agencies and regulators an opportunity to interact with small businesses electronically and discuss compliance issues or simply listen to small business concerns. The forums should give small businesses the tools to learn, collaborate, and communicate with other small businesses that are experiencing the same issues.

The forums will be permissions-based, giving the KCSBA the ability to define which members can participate in particular discussions. The KCSBA would like to be able to post documents, allowing members to review information before the forum begins. As regulations are proposed by state agencies that regulate small businesses, the KCSBA will be able to post the proposed regulations for review and request feedback about the regulatory impact and estimated compliance costs.

The Small Business Portal/Online Help Desk will allow members to post questions for fast answers. In addition, the Small Business Portal/Online Help Desk will provide for virtual meetings online and real-time chat.

Additional features that will be covered as part of interactive communications include:

Survey Tool

The Small Business Portal/Online Help Desk will offer a survey tool that the administrator can customize to meet the needs of the KCSBA. The portal should automatically display the results of surveys for all users to see.

The KCSBA will be able to create custom online surveys, represent the results graphically, track individual user responses, export data to Excel for further analysis, and specify whether responses will be available for all members to view.

Member Feedback

The KCSBA will be able to post questions, and have members provide feedback. Members will be able to type in free text and submit information to the KCSBA via email.

Real-time Chat

Provide real-time communication between members via computer. This will enable businesses to save expenses related to travel, events, and material replication. Delivering real-time communications simplifies communications between business owners, employees, and state agencies, regardless of their geographic location. Employees can spend more time working and less time traveling. Chat features in the small should allow members to:

- Exchange instant text messages - type text messages using the keyboard. The entered text will appear on the other user's computer screen.
- Exchange files (e.g., documents, photos)
- Post information on message boards
- Meet other small businesses with similar interests / issues
- Chat Rooms – Chat should have multiple-user mode, so groups can conduct conferences and meet other small businesses with similar interests / issues
- Private messages – All members in a chat room can view chat messages, unless the member marks a message as private. Members should be able to select other members from a list and send a private message that only the specified member(s) can see.
- Receive online notification - notifies members which of their friends and associates are online
- Receive login notification – notifies members when friends and associates log in
- Utilize status bar - a status bar should included that can be used by members to inform others when they are busy while logged into Chat. Members should be able to enter a custom status message indicating that the member is busy. A screen stating the member's custom message should be visible to others using the chat feature.
- Utilize an auto-away feature – provide a feature that allows members to change their status to "Away" whenever they have not sent a message for longer than a set period of time. When the Auto-Away feature activates, a message is sent to the Chat screen stating, "{User} is now away." The Auto-Away response will turn off as soon as the member becomes active again by sending a message.
- Ignore users and events – provide members with the ability to ignore certain kinds of messages or ignore messages from specific users?

Appendix 4 - Helping Small Businesses: Small Business Portal/Online Help Desk - continued

Master Calendar

The Small Business Portal/Online Help Desk will include a master calendar that allows each cabinet of state government, including the KCSBA, to publish upcoming events (one-time events as well as recurring events). Each member will have the ability to view these events, as well the ability to add personal events viewable only to them. Examples of events that can be published include free compliance assistance, tax seminars, training opportunities, etc. The master calendar will provide a way to post information without having to go through the time and expense of mailing notices.

The master calendar will include an event-scheduling feature. This feature allows KCSBA, state agencies, and small businesses across the state to submit events for placement on the calendar. When users submit an event, a new email message is generated that allows the user to write text information and attach files about the event that they wish to be included with the event posting.

Document Sharing/Collaboration

Features will be included in the Small Business Portal/Online Help Desk that make project collaboration easy by allowing members to upload, download, and share documents from the Small Business Portal/Online Help Desk. Members will be able to subscribe to information services, which will automatically e-mail updates on searches, document changes, or specific topics that members need to track. The Small Business Portal/Online Help Desk should accept most file formats, including video and the functionality will be updated with new software releases. This includes common document and file types such as Microsoft Office 95, Office 97, and Office 2000 documents, Microsoft Windows Media files, HTML files, and PDF files.

Headline News

The Small Business Portal/Online Help Desk will contain a listing of headline and small business news

Stock Market Information

The Small Business Portal/Online Help Desk will display stock quotes and up-to-date stock market statistics. Each member can customize the view to display individual stocks that the member wants to track.

Search Engine

The Small Business Portal/Online Help Desk search engine will provide the ability to search documents for specified keywords and return a list of the documents where the keywords were found. Text based searches of document libraries and Google Internet searches may also be performed by users.

Return on Investment (ROI) on Small Business Internet Portal/Online Help Desk Project

Return on Investment: State government will save an estimated at \$2,990,890. In addition, the state can expect increased tax collections of \$3,588,872 to \$6,370,000 in increased tax revenue for a total ROI of 48.6 to 1. More importantly, reductions in regulatory compliance costs for Kentucky businesses is estimated at \$51,269,610 to \$91,000,000.

	2003	2004
Proposed Online Help Desk Fees		
Estimated One Time Fee Set-up Fee	\$35,000	0
Estimated yearly hosting fee - 12,000 small businesses	\$66,000	79200
Project Management	\$30,000	30000
Temporary Labor to add Content	\$25,000	25000
Marketing	\$20,000	30000
Estimated one year cost	\$176,000	\$164,200

Return on Investment (ROI) on Small Business Internet Portal/Online Help Desk Project (Continued)

Savings to the Commonwealth

Additional salary of staff person that would be needed for KCSBA to process questions/complaints. (\$31,500 is the average yearly wage of a state government employee.)	\$31,500
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If we send one letter to each small business: 87,550 businesses with one to 100 employees, 135,000 self-employed and 82,000 farmers = 304,550 business entities. The cost of sending one letter to each small business is estimated at \$5 per letter. One letter to each would cost \$1,522,750	\$1,522,750
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How many mailings does each Cabinet send each year to small businesses? The Revenue Cabinet does 8 mailings per year just for the Sales and Use Tax Seminars. Assume that the cabinets for Revenue, Labor, Public Protection, Natural Resources, Unemployment Insurance and the Agriculture Department did a total of 70 mailings to JUST 12,000 small businesses at a estimated cost of \$1 per bulk mail letter, the savings would be \$840,000.	\$840,000
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Decreased Litigation Time - Natural Resources Cabinet has budgeted 4,809,000 for legal services for fiscal year 03 - if we can save 1% - 5% that would mean a savings of \$48,090 - \$240,450.	\$240,450
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Decreased Administrative Hearings - Natural Resources Cabinet has budgeted \$813,800 for fiscal year 05 - if we can save 1 to 3% that would mean a savings of \$8,138 - \$40,690.	\$40,690
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Decreased Enforcement Costs

Increased State Income Tax E-filers (\$7.50 to process hard copy, .50 cent to process forms e-filed). If 10% of 12,000 E-filed it would save \$86,000.	\$86,000
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The cost of conducting a valid Regulatory Impact Analysis on each proposed regulation would be substantial. The statute says:

"The Regulatory Impact Analysis must identify the type and number of individuals, businesses, organizations and state and local governments affected by the administrative regulation; and an assessment of how the affected groups will be impacted."

The only way for any state agency to properly assess the impact is to ask a group of businesses to review the proposed regulations and calculate the estimated cost to comply with the new regulations (This may also be seen as an additional regulatory burden). Some regulations affect all small businesses and some affect specific industry. The small business portal will give us an opportunity to directly contact specific businesses based on their subscriber profile and ask for voluntary feedback. This feed back would be compiled and reported to the Administrative Regulation Review Subcommittee each month. KCSBA can communicate with small businesses more efficiently and by region, by product, by size, etc

Cabinets do not have an effective mechanism to learn how new or amended regulations affect small businesses.

In 2001, there was an average per month: of 24 new regulations, 29 amendments and 13 emergency amendments made to existing regulations. If we assume that 50% of new or amended regulations affect small business, the average total of new or amended regulations would be 33. Assuming an agency would need to receive feedback from 25 small businesses (Cabinets would need to contact at least 100 small businesses in order to get feedback from 25) in order to determine the impact of the proposed regulation). We feel it would cost at least \$5 per contact and if you have an average of 33 new or amended regulations each month - it would cost one Cabinet \$16,500 per month to comply. Also, a Cabinet may need to hire additional staffing be able to handle this amount of work (average yearly salary of state government employee is \$31,500).	\$229,500
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**Return on Investment (ROI) on Small Business
Internet Portal/Online Help Desk Project
(Continued)**

Savings to Small Business Owners

Estimated Savings can be calculated two different ways -

Range of savings is \$51 to \$91 million dollars

We assume that successful implementation of the small business portal will result in a decrease in regulatory compliance costs. Regulatory compliance costs for state administered environmental regulations accounts for almost 50% of the \$9.1 billion cost. If we estimate that the small business portal will reduce regulatory compliance costs by 1% of \$9.1 billion, that would equal \$91,100,000 per year. This savings could be used for pay increased wages for employees, equipment purchases, hire new employees and generate higher profits and higher tax revenues. \$91,000,000

The cost per employee for small businesses to comply with federal regulations is approximately \$7,000. A 1% savings represents \$70 per employee. Small businesses employed 732,423 employees based on 2001 SBA Profile. Multiply the \$70 per employee times the number of employees for total savings of \$51,269,610. These savings could be used to offset the significant increases in health and workers compensation insurance. \$51,269,610

Estimated Tax Revenues based on savings

Based on 6% sales tax and 8% personal income tax, assume 7% of estimated savings will be tax revenues for a total of \$3,588,872 to \$6, 370,000. \$6,370,000

Higher Customer Satisfaction

Appendix 5

KCSBA Budget Request 2003-2004

FY03 - \$535624 • FY 04 \$612,802 • Two Year Total \$1,148,426

Description	FY 01 Final	FY 02 Current	FY 03 proposed	FY 04 proposed	FY 03 program 1	FY 04 program 1	FY 03 program 2	FY 04 program 2	FY 03 program 3	FY 04 program 3
SALARIES	47931	72700	92400	97000	28300	29700	2700	3000	0	0
EMPLOYER FICA	3483	5200	6700	7000	2100	2200	200	200	0	0
EMPLOYER RETIREMENT	2823	4300	6100	6400	1900	2000	200	200	0	0
HEALTH INSURANCE	2106	3600	4600	4700	6400	3528	0	0	0	0
LIFE INSURANCE	21	100	100	100	24	24	0	0	0	0
JANITORIAL	368	1000	1000	1100	0	0	0	0	0	0
PROFESSIONAL SERVICES	0	0	0	0	0	0	0	0	100000	50000
TEMPORARY LABOR	29	0	0	0	0	0	0	0	0	0
TOTAL PERSONNEL	56761	86900	110900	116300	38724	37452	3100	3400	100000	50000
NATURAL GAS	340	1400	1400	1400	200	200	200	200	200	200
ELECTRICITY	279	400	400	500	0	0	0	0	0	0
WATER SEWAGE	13	100	100	100	0	0	0	0	0	0
RENT	4390	7600	7600	7600	1100	1100	1100	1100	1100	1100
CARPOOL		1000	1000	1500	0	0	0	0	0	0
EQUIP MAINTENANCE		1000	1000	1000	0	0	0	0	0	0
COPY MACHINE MAINTEN		1000	1000	1000	0	0	0	0	0	0
POSTAGE	7000	2000	2200	25500	51000	3400	7000	25500	25500	
OTHER PARCEL DLVRY		400	400	400	0	0	0	0	0	0
PRINTING-STATE	75	12000	5000	3200	12400	12400	11100	22650	33750	33750
PRINTING-VENDOR		2000	2000	2000	0	0	0	0	0	0
INSURANCE PREMIUM		200	200	300	0	0	0	0	0	0
GARBAGE		300	300	300	0	0	0	0	0	0
OTHER SERVICES		200	200	200	0	0	0	0	0	0
TRADE SHOWS		8000	1000	1000	5000	5000	3300	6700	10000	10000
TELEPHONE	1233	1300	1300	1300	3000	4200	9900	20100	3000	3000
OTHER TELECOM	100	100	100	0	0	0	0	50000	50000	
CELL PHONE	1000	1000	1000	0	0	800	800	800	800	
TECH SERVICES		6000	1600	2000	0	0	0	0	2500	2500
TOTAL OPERATING 200	6331	51000	27600	27100	47200	73900	29800	58550	126850	126850
OFFICE SUPPLIES		700	700	700	500	500	300	700	500	500
KITCHEN SUPPLIES	1000	1000	1000	0	0	0	0	0	0	
PHOTO SUPPLIES	21	1000	200	200	0	0	300	700	500	500
COPIER SUPPLIES	1000	1000	1000	0	0	300	700	800	800	
PRO CARD PURC	373	500	500	500	0	0	0	0	0	0
FURN/FIXT/OFF EQP	4401	13000	400	500	0	0	600	1400	3000	0
BOOKS FOR DEPT USE		2000	500	600	0	0	0	0	0	0
COMPUTER SOFTWARE		700	700	800	0	0	300	700	10000	10000
FILMS VIDEOS	800	500	600	0	0	0	0	0	0	
IN ST TRAVEL		8000	3000	2000	0	3000	600	1200	0	0
OUT ST TRAVEL	501	4000	4000	2700	0	4000	0	0	0	0
TRAVEL MEMBERS	1500	1500	1500	0	4000	500	1000	0	0	
DUES/SUBSCRIP	20	200	500	200	0	0	0	0	0	0
OTHER	0	2700	0	300	0	3600	8300	16900	10450	56450
TOTAL OPERATING 300	5315	37100	14500	12600	500	15100	11200	23300	25250	68250
COMPUTERS	4884		0	0	0	0	0	0	0	0
DEBT SERVICE	4884		0	0	0	0	0	0	0	0
FURN/FIXT/ + \$5,000	5995		0	0	0	0	0	0	0	0
TOTAL CAPITAL EXPEND	9768		0	0	0	0	0	0	0	0
Cost per business			0.51	0.52	0.29	0.42	0.15	0.28	0.84	0.82
Cost per business for two yrs	\$3.83		Cost per business for one year			\$1.91				

BUDGET FOOTNOTES

SIZE OF SMALL BUSINESS CONSTITUENCY - Estimated 87,000 business < 100 employees plus 212,238 self-employed persons for a total of more than 300,000 small business entities. Annual Payroll for firms with 1 to 100 employees is in excess of \$18 billion.

PROGRAM 1

Section 2 - Duties - HB 588

(c) Coordinate and educate the small business community of federal, state, and local government initiatives of value and importance to the small business community; We need \$.71 per business for the biennium to educate and communicate with Kentucky Small Business (Mailings, outreach training - leverage existing outreach efforts by state agencies, Small Business Development Centers, Chambers, Business & Trade Associations and SBDC).

PROGRAM 2

Section 1 - Purpose - HB 588

(e) Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community; and

(f) Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.

(d) Collect information and research those public policies and government practices which are helpful or detrimental to the success and growth of the small business community.

We need \$.43 per business for the biennium to establish and maintain a small business ombudsman function in the KCSBA that receives small business complaints regarding regulatory enforcement or compliance. The ombudsman will investigate reported complaints, reports findings, and helps to achieve equitable settlements.

KCSBA will need to hire an executive secretary to take over some of Donna Lewis's current job responsibilities and Donna Lewis will become the Ombudsman.

Justification: Current and future budget shortfalls are going force state government to continue to provide services with fewer and fewer people. Personnel shortages are already impacting state regulatory enforcement and compliance efforts. If small business owners have problems with enforcement actions and there are fewer people to assist in resolving the problem, then there may be unforeseen consequences either alone or in concert with other requirements, may have devastating and even bankrupting consequences. Small business may fear retaliation if they complain to the regulators that regulate them. The economic downturn in Kentucky and the U.S. will small business more fragile and government should do whatever it can to assist small business. Each small business comment presents multiple opportunities. First, it provides the small business an opportunity to get a timely, high-level, independent review and response to its concern.

Second, it gives the agency an opportunity to demonstrate its responsiveness and learn about the impact their field practices have on small business. Third, the comment provides the KCSBA the opportunity to evaluate agency performance, dissect the enforcement or compliance activity, and obtain recommendations directly from the small business.

PROGRAM 3

Section 2 - Duties - HB 588

(b) Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation;

Section 1 - Purpose - HB 588

d) Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector;

We need \$1.66 per business over the biennium for development and implementation of virtual small business community portal via Internet to provide "help desk" and link to State government agencies for small business owners. This initiative would link with Greater Louisville Inc.'s Small Business Inc Tank portal. The initial objective is to create a virtual small business community of at least 12,000 Kentucky small businesses which will provide government agencies input into the administrative regulation review process.

This is the most cost effective way to get small business connected to the process. e-Government services would be available to a very valuable group of Kentucky taxpayers.

Executive Spending Plan

Government Operations					
Commission on Small Business Advocacy					
	Revised FY 2002	Requested FY 2003	Requested FY 2004	Recommended FY 2003	Recommended FY 2004
SOURCE OF FUNDS					
General Fund					
Regular Appropriation		535,800	613,000	75,000	75,000
Total General Fund		535,800	613,000	75,000	75,000
Restricted Funds					
Balance Forward	220,700			90,000	45,000
Total Restricted Funds	220,700			90,000	45,000
TOTAL SOURCE OF FUNDS	220,700	535,800	613,000	165,000	120,000
EXPENDITURES BY CLASS					
Personnel Cost	86,900	252,800	207,200	92,600	96,900
Operating Expenses	38,100	283,000	405,800	27,400	23,100
Capital Outlay	5,700				
TOTAL EXPENDITURES	130,700	535,800	613,000	120,000	120,000
EXPENDITURES BY FUND SOURCE					
General Fund		535,800	613,000	75,000	75,000
Restricted Funds	130,700			45,000	45,000
TOTAL EXPENDITURES	130,700	535,800	613,000	120,000	120,000

The Kentucky Commission on Small Business Advocacy (KCSBA) was established as a result of House Bill 588 in the 2000 Legislative session and codified as KRS 11.200. The KCSBA is an independent agency attached to the Office of the Governor that addresses matters of small business as it relates to government affairs.

The KCSBA works to promote a cooperative and constructive relationship between state agencies and the small business community. The KCSBA coordinates and educates the small business community of federal, state, and local government initiatives; creates a process by which the small business community is consulted in the development of public policy; aids the small business community in navigating the regulatory process; and acts as an advocate as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.

Policy

The recommended budget anticipates not less than \$90,000 in restricted funds carrying forward into fiscal year 2003. The recommended budget includes General Fund of \$75,000 each fiscal year to continue the work of the Commission.

Participation in the Kentucky Administrative Regulation Review Process — KRS 13A.240 - Regulatory Impact Analysis

The Administrative Regulation Review Process has a direct impact on small businesses that must operate under laws and administrative regulations of the state of Kentucky. This regulatory review process provides several public hearings and legislative meetings that are all open for comment.

The KCSBA will be an active participant in the Kentucky Administrative Regulation Review Process, participating in public hearings and testifying on behalf of small business owners regarding the impact of proposed regulations. The KCSBA's statutory responsibilities include:

KRS 11.202 (b) states that the KCSBA should "Develop a process by which the small business community is made aware of state legislation and administrative regulations affecting it, both prior to its enactment and during its implementation.

KRS 11.200 (f) states KCSBA should "Advocate for the small business ... when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.

Every state agency or administrative body must provide a Notice of Intent (NOI) that the agency proposes a new or changed administrative regulation known as Kentucky Administrative Regulations (KAR). Small businesses must comply with numerous regulations from state, federal and local government agencies. The cost to Kentucky small businesses is estimated at more than \$9.1 billion per year.

SBA commissioned and published a report in June 2002 titled "Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses". The analysis of this study looked at how state efforts compared to federal protection under the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act (SBREFA) and Executive Order 12866.¹²

The research showed that few states are actively implementing protections for small businesses against burdensome regulations, with fewer still implementing meaningful programs that are genuinely benefiting the small business community.

Here is what the report had to say about Kentucky:

"Kentucky has no specific legislation in place that addresses small business concerns however, there is legislation that requires review of legislation and regulations and ensures that the legislature and agencies review new laws or regulations that are identified as potentially burdensome for certain groups."

"This is mainly in response to environmental regulations, and therefore models the federal government's regulatory assessment created through the Clean Air Act."

"Kentucky also recently created in 2001 a Commission of Small Business Advocacy made up of the Kentucky SBDC chair, small business owners and others. This is the main tool to help small businesses ensure agencies don't overly burden them; this body would act as the Regulatory Flexibility Act equivalent."

Funding problems in the state have made this program potentially expendable, hence it has not been fully incorporated.

"Kentucky is trying to create a program similar to SBREFA, but respondents indicated that providing funding and keeping the legislature focused on making this happen is proving difficult."

"The commission has no real authority, as it only acts as the 'voice of the small businessperson' and currently functions solely as a watchdog group."

The Administrative Regulation Review Process is an opportunity for anyone, especially small business owners that must comply with the new regulations or other interested parties to provide public comment about the impact that proposed regulations will have on their small business.

However, as you will see from description below, the regulatory review process is lengthy and time consuming. Small business owners' most valuable asset is their time and they simply do not have the time to travel to the capitol and present themselves before the legislature to testify on the impact of regulations on their businesses. The KCSBA will be the voice of small business, testifying at public and legislative hearings. Commission testimony will be solicited from small business owners, the KCSBA board members and trade and business group association executives and lobbyists.

It takes more than six months to change an existing or enact an ordinary new administrative regulation in Kentucky and is a detailed bureaucratic process. Emergency regulations follow a different procedure. KCSBA must get involved in the process at the beginning in order to accomplish its legislative mandate.

As a result, very few businesses have the time or informational resources to actually get involved in this lengthy process. The KCSBA and state agencies that regulate small businesses should work together and adopt regulations that take into consideration the disproportionate impact of regulatory compliance costs on small businesses versus larger businesses. The result of this collaborative effort will be a reduction in regulatory compliance costs for small businesses and the state will reduce its costs to enforce regulations — Kentucky's economy will grow and prosper.

¹² Analysis of State Efforts to Mitigate Regulatory Burdens on Small Businesses, June 1, 2002, www.sba.gov/advo/research/rs219tot.pdf

Appendix 6A

Federal Regulatory Impact Analysis on Kentucky Small Businesses

Description	Self-Employed	Self-Employed Sales, receipts or Shipments (\$ in thousands)	Estimated Self-Employed Regulatory Costs	Est. with Employees	Sales, receipts or Shipments (\$ in thousands)	Payroll (\$ in thousands)	Paid Employees	Regulatory Costs with Employees	TOTAL Federal Regulatory Costs including Self-employed **
GRAND TOTAL	212238	\$ 6,866,112	\$ 912,623,400	82,267	\$ 221,309,471	\$ 33,187,341	1,369,893	\$ 7,819,469,795	\$9,085,867,095
Forestry, fishing & hunting & ag support	4737	\$ 142,866	\$ 20,369,100		n/a	n/a	n/a	n/a	\$ 20,369,100
Mining	1472	\$ 65,855	\$ 6,329,600	691	\$ 5,324,568	\$ 832,468	22,400	\$ 127,861,171	\$ 134,190,771
Utilities	209	\$ 8,654	\$ 898,700	328	\$ 8,236,037	\$ 505,207	11,367	\$ 64,883,836	\$ 65,782,536
Construction	36818	\$ 1,381,274	\$ 158,317,400	8,878	\$ 9,896,219	\$ 2,000,656	76,876	\$ 438,814,973	\$ 597,132,373
Manufacturing	3887	\$ 142,182	\$ 16,714,100	4,218	\$ 86,636,107	\$ 9,198,091	288,405	\$ 1,646,241,120	\$1,662,955,220
Wholesale trade	4501	\$ 297,545	\$ 19,354,300	5,051	\$ 37,242,872	\$ 2,071,234	69,309	\$ 395,621,871	\$ 414,976,171
Retail trade	30856	\$ 1,222,512	\$ 132,680,800	17,369	\$ 33,332,675	\$ 3,128,099	212,189	\$ 1,211,193,485	\$1,343,874,285
Transportation & warehousing %% **	10437	\$ 504,417	\$ 44,879,100	2,919	\$ 6,288,735	\$ 1,447,860	49,545	\$ 282,807,220	\$ 327,686,320
Information	1526	\$ 33,753	\$ 6,561,800	1,261	\$ 5,056,056	\$ 814,710	29,098	\$ 166,093,945	\$ 172,655,745
Finance & Insurance	7045	\$ 257,532	\$ 30,293,500	5,373	NA	\$ 1,859,987	60,241	\$ 343,860,929	\$ 374,154,429
Real estate & rental & leasing	15517	\$ 944,736	\$ 66,723,100	3,227	\$ 1,961,641	\$ 314,279	16,284	\$ 92,950,505	\$ 159,673,605
Professional, scientific, & technical services	26948	\$ 623,913	\$ 115,876,400	6,189	\$ 3,820,337	\$ 1,260,117	41,991	\$ 239,688,323	\$ 355,564,723
(Non-Taxable)	n/a	n/a	n/a	43	\$ 32,952	\$ 15,230	490	2796963.12	\$ 2,797,006
Management of companies & enterprises	n/a	n/a	n/a	772	\$ 1,648,582	\$ 1,441,126	28,398	162098283	\$ 162,099,055
Administrative & support & waste management & remediation services	12593	\$ 158,841	\$ 54,149,900	2,848	\$ 2,147,364	\$ 941,688	74,123	\$ 423,100,607	\$ 477,250,507
Educational services	2147	\$ 18,916	\$ 9,232,100	352	\$ 109,555	\$ 26,939	1,828	\$ 10,434,385	\$ 19,666,485
(Non-Taxable)				75	\$ 25,128	\$ 9,524	517	\$ 2,951,081	\$ 2,951,081
Health care & social assistance	12469	\$ 270,569	\$ 53,616,700	6,805	\$ 5,936,247	\$ 2,620,311	94,720	\$ 540,670,095	\$ 594,286,795
(Non-Taxable)				1,579	\$ 6,026,729	\$ 2,386,424	100,156	\$ 571,699,262	\$ 571,699,262
Arts, entertainment, & recreation	7179	\$ 117,376	\$ 30,869,700	906	\$ 550,206	\$ 126,305	10,580	\$ 60,391,571	\$ 91,261,271
(Non-Taxable)				264	\$ 222,357	\$ 63,059	4,525	\$ 25,829,098	\$ 25,829,098
Accommodation & foodservices	1970	\$ 69,914	\$ 8,471,000	6,546	\$ 4,056,107	\$ 1,140,617	129,442	\$ 738,866,327	\$ 747,337,327
Other services (except public administration)	31927	\$ 605,257	\$ 137,286,100	5,383	\$ 1,870,271	\$ 551,393	31,164	\$ 177,886,854	\$ 315,172,954
(Non-Taxable)				989	\$ 743,217	\$ 116,227	5,534	\$ 31,588,559	\$ 31,588,559
Auxiliaries, exc corp, subsidiary, & regional managing offices	n/a	n/a	\$ -	201	\$ 145,509	\$ 315,790	10,711	\$ 61,139,331	\$ 61,139,331
TOTAL	212238	\$ 6,866,112	\$ 912,623,400	82,267	\$ 221,309,471	\$ 33,149,878	1,369,893	\$ 7,819,469,795	\$8,732,093,195
Agriculture *	82,273	\$3,100,000	\$ 353,773,900						\$ 353,773,900
Grand Total	294511	\$ 9,966,112	\$ 1,266,397,300	82,267	\$ 221,309,471	\$ 33,149,878	1,369,893	\$ 7,819,469,795	\$9,085,867,095

This report was prepared by the Kentucky Commission on Small Business Advocacy, 312 W Main Street, Frankfort KY 40601, (502) 564-6659, FAX (502) 564-2315, <http://smallbusiness.state.ky.us>, email: KCSBA@mail.state.ky.us

* Source: <http://www.nass.usda.gov/ky/>. Estimated Regulatory costs based on \$4300 per farm

** Firms with 500 or fewer employees employ 52.3% of workforce.

The estimated federal regulatory cost is based on the number of employees times 52.3% times \$6975 plus the number of employees times 47.7% times \$4319.

"Waiver & Reduction" of Penalties for Small Business (HB 841)

Small business owners that inadvertently violate an administrative regulation or statute should not be penalized unless the violation poses a serious health, safety or environmental threat. Small businesses should receive a pre-notice of violation and a reasonable time to correct the problem. The Small Business Regulatory Enforcement Fairness Act (SBREFA) which was signed into law in March 1996, requires all federal agencies that regulate small businesses to have a "waiver & reduction" of penalty policy.

Representative Tanya Pullin and Representative Ruth Ann Palumbo introduced HB 841, "Waiver or Reduction" of Penalties on Small Businesses during the 2002 session. This bill required all state agencies that have the authority to assess civil penalties to establish a policy providing for the reduction or waiver of civil penalties for violations of a statutory or regulatory requirement by a small business entity with fewer than 100 employees. This policy would not apply to habitual violators, if the violation posed a serious health, safety or environmental threat, or if the violation was discovered through an inspection. The law was intended to limit the applicability of the "waiver & reduction" to voluntary reporting or violations discovered through a compliance assistance program. The bill also required agencies to provide small business entities with reasonable time to correct the violation before receiving a notice of violation.

Rep. Pullin, the KCSBA and Deputy Secretary Hank List of the Natural Resources & Environmental Protection (NREPC) worked closely on acceptable language of the Bill, which passed unanimously out of the House Economic Development Committee. Unfortunately, the Bill was recommitted to the Appropriations and Revenue Committee where it died. The bill will be pre-filed and hearings will be held prior to the 2003 session of the General Assembly. Even though adequate commission funding will continue to be the KCSBA's top priority, this legislation will be an important part of the KCSBA's legislative agenda.

HB 841: "Waiver or Reduction" of Penalties on Small Businesses

AN ACT relating to the regulation of small businesses.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

- (1) Each department, program cabinet and its departments, and the respective administrative bodies which are included therein that are required to regulate small business entities, which are defined as those having fewer than one hundred (100) permanent full-time employees, and which are granted the authority to assess civil penalties shall, by July 1, 2003, establish a policy or program to provide for the reduction and, under appropriate circumstances, the waiver of civil penalties for violations of a statutory or regulatory requirement by a small business entity.
- (2) Subject to the requirements or limitations of other provisions of the Kentucky Revised Statutes, policies or programs established under this section shall contain conditions or exclusions which may include, but shall not be limited to:
 - (a) Requiring the small business entity to correct the violation within a reasonable correction period;
 - (b) Limiting the applicability to violations discovered through participation by the small business entity in a compliance assistance or audit program operated or supported by the regulatory body or discovered through any voluntary means or through self-reporting;
 - (c) Excluding small business entities that have been subject to multiple enforcement actions by the regulatory body;
 - (d) Excluding violations involving willful or criminal conduct;
 - (e) Excluding violations that pose serious health, safety or environmental threats; and
 - (f) Requiring a good faith effort to comply with the law.

Beginning on July 1, 2004, each department and program cabinet that is required to regulate small business entities and has the authority to assess civil penalties shall issue an annual written report to the Administrative Regulation Review Subcommittee and to the Legislative Research Commission that shall contain information concerning the number of enforcement actions against small business entities that qualified or failed to qualify for the program or policy, and the total amount of penalty reductions and waivers.

Health Insurance Rates are Skyrocketing

A healthy workforce is critical in creating a healthy economy. As this country offers no national health plan, the employer is key to obtaining health insurance for most Americans. Almost two-thirds of non-elderly Americans receive private health insurance coverage through employment.¹³ Seventy-four percent, or three out of every four workers are offered health insurance by their own employers, and sixty-three percent, or six out of 10 receive employment based coverage.¹⁴ Firm size is a critical determinant in the offering of health coverage to employees. Higher costs to offer the same benefits preclude many firms from offering coverage.¹⁵

Employer-sponsored health insurance in an organization is part of a total compensation package. To cost effectively operate, each worker must earn what they are “worth” or produce for the organization. This worth is comprised of wages and benefits, which may include insurance, pension plan, and other miscellaneous items such as parking. If the cost of one component of the package rises another must be adjusted for the organization to remain financially sound.

For many years, employers have included health coverage as part of their compensation to employees, and many employees have come to expect a certain level of coverage as part of their individual compensation package. Employers designed these compensation packages to increase at a certain level, without consideration of the disproportionate increase in health insurance rates. These cost increases have driven employers to alter the focus of benefit plans to cost containment, and for some employers, especially small business, forced the decision to drop health plans entirely.

Small businesses in Kentucky make up 52% of the workforce and have very limited access to insurance for principals and employees because it is unaffordable and unavailable. In “What’s Next for Kentucky Healthcare”, the authors summed it up this way: “The small firms that are the backbone of Kentucky’s and, increasingly, the nation’s economy are significantly less likely than mature, large firms to provide workers access to health insurance. In 1998, firms with fewer than 25 employees were the least likely to offer employment-based health insurance; only 29.3 percent of employees of these firms had employment based insurance compared to 53.3 percent of all workers and 66 percent of those employed by firms with 500 or more employees.”¹⁶

The unaffordability of insurance in the state, and many other areas of the country, has been brought about in large part by mandates. In 1989 states had passed over 700 mandates, most requiring coverage of specific medical problems or services of specialized providers. A Health Insurance Association of America study conducted at that time concluded that mandates raised the price of coverage, discouraged small business from providing coverage, and encouraged larger firms to self-insure. Today, the number of mandates is substantially more. The authors of this study’s further research finds that during the period 1989-1995 elimination of mandates would have raised the proportion of small firms offering coverage by 9.4 percent, and small firms that would offer coverage were it not for mandates comprise 18 percent of all uninsured small businesses.¹⁷

The well-intentioned legislative reforms in Kentucky from 1994 through 1998 followed national initiatives at the time and were designed to provide better access to health care for all Kentuckians. They have, in fact, had just the opposite effect. The legislative reforms moved rating structures in the state from “experience” to “community,” causing over 50 carriers to pull out of the Kentucky market in response to excessive regulation and as a result anticipated losses. Subsequent legislation has softened regulations to an extent, luring a few carriers back into the market, but the situation is still grim.

¹³ “Health Insurance Coverage and the Uninsured, Commissioned by Health Insurance Association of America (HIAA) from The Center for Risk Management and Insurance Research, Georgia State University, January 1999.

¹⁴ “Employment-Based Health Insurance Coverage, Commissioned by Health Insurance Association of America (HIAA) from The Center for Risk Management and Insurance Research, Georgia State University, 2000

¹⁵ “Employment-Based Health Insurance Coverage, Commissioned by Health Insurance Association of America (HIAA) from The Center for Risk Management and Insurance Research, Georgia State University, 2000

¹⁶ “Trends Influencing Access to Health Care”, by Michael Smith-Mello, Julia Field Costich, and F. Douglas Scutchfield, from “*What Next for Kentucky Health Care*”.

¹⁷ “Mandated Benefit Laws and Employer-Sponsored Health Insurance”, Gail A. Jensen, PhD, Dept. of Economics & Institute of Gerontology, Wayne State University, and Michael A. Morrissey, PhD, Lister Hill Center for Health Policy, University of Alabama-Birmingham, Commissioned by the Health Insurance Association of America.

Appendix 8 - Health Insurance Rates are Skyrocketing – continued

While all businesses in the state have been impacted by the lack of choice among providers and high rates, small business is at the greatest disadvantage:

- Self insurance is often not an option for small business;
- Benefit plans, having long been a part of the recruiting package, drive employees to larger companies where they can find greater choice of benefits and lower rates;
- Increases in insurance costs must be paid for, causing employers to reduce wages or the level of other benefits;
- Other options for individual insurance for those working in small businesses, such as Kentucky Kare have incurred high financial losses due to adverse selection, a situation that could ultimately lead to inability to deliver coverage; and
- Such sweeping health insurance problems can have the effect of driving large businesses (which small service businesses often rely on), small businesses and employable individuals out of the state.

Small business owners in Kentucky report to the Commission that the state needs more competition to lower rates, that mandates are excessive, that their insurance costs have doubled every three years, and they are losing valuable employees to larger companies able to offer better insurance plans due to size. Small employers have to shop around more frequently, causing employees to have to make changes in physicians. Small business owners also believe that employees need to be better-educated consumers of health care. There is a good deal of support among small employers for joining a pool and self-insuring, i.e. association health insurance initiatives. There is also a concern about intense direct marketing of prescription drugs – causing patients to feel that they need these products and ask doctors for them when not necessary or in lieu of generic drugs that are less costly.

Recognizing that the labor force is the greatest asset of most businesses, large and small, and that the attraction of a strong labor force is crucial to the success of small business, the Commission is committed to exploring all avenues to find health care solutions for small businesses. These include but are not limited to:

- Work with organizations around the state, such as the KY Chamber of Commerce, AIK and the KY Farm Bureau;
- Continue to examine Kentucky legislation and work with local legislators to create a more competitive environment for insurers;
- Work with State Legislators on applicable federal legislation;
- Work with insurers to understand their requirements to offer quality coverage to small businesses;
- Promote national initiatives that are in the best interests of small business;
- Work to provide better pooling opportunities through state government and professional associations; and
- Work to educate small business owners and employees to be better consumers of health care.

What is Being Done?

KY Farm Bureau – the organization's leadership is looking several options to assist their members in obtaining affordable health coverage. In 2001, Farm Bureau EVP David Beck said that health insurance coverage is a major issue with the membership, primarily with respect to cost, but also extending to flexibility of coverage and quality of service. In addition to traditional coverage, the Bureau hopes to have a Medical Savings Account (MSA) coverage option in place by the end of the year. Legislative solutions are also being given consideration and the organization acknowledges that although some of the damage done by the 1994 reforms has been mitigated, other changes are needed to restore a competitive health insurance environment.

CHA Health – are planning to have an MSA for employers in 2003.

There have been over 40 bills introduced in 2001-2002 related to solving health care problems¹⁸.

¹⁸ <http://smallbusiness.state.ky.us>

Access to Capital: Taxation and Financial Incentives

The birth and growth of a small business requires an environment that allows the entrepreneur to obtain funding to bring the operation to fruition, and an environment that does not impose undue financial hardship and excessive record keeping on the entrepreneur. It requires regulations and processes that are concise, consistent and easily executed as it is most often the business owner, not an attorney or CPA firm that is responsible for compliance.

The Small Business Survival Committee reports the number of small businesses in the US jumped from 13.3 million in 1975 to an estimated 22.4 million in 2001 – a jump of almost 60%. Further data reveals small businesses: account for 99% of all employers; employ 52% of private-sector workers; produces 55% of innovations, produce twice as many product innovations and significant innovations as large firms, and obtain more patents per sales dollar than large businesses; account for 47% of sales in the US; contribute 51% of private gross domestic product; and between 1990 and 1997 created over 75% of net new jobs.¹⁹

The Small Business Administration defines small business as an enterprise consisting of 500 or fewer employees, however the large majority of small businesses employs between 1 and 9 individuals. This group comprises the largest single segment of small businesses, representing over 3,600,000²⁰ principals and employees. In Kentucky, there are a total 89,846 businesses. Kentucky businesses breakdown as follows: 45,836 with 1-4 employees; 18,826 with 5-9 employees; 11,923 with 10-19 employees; 9,965 with 20-99; and 2,165 with 100-499 employees²¹. It is of particular concern to the KCSBA to provide stronger recognition and better access to benefits and programs for this group.

The KCSBA has reviewed reports, studies and information from our small business owners and concluded:

- While Kentucky has many financial assistance programs for businesses, ceilings on job creation and income generation make securing access to these programs difficult for start-up firms that do not anticipate rapid growth (within two years) to the job creation ceiling, or do not plan to become a firm of that size.
- Information on many programs is excellent and available, such as the Business Information Clearing-House and the Small and Minority Business Program of the Economic Development Cabinet. However, these resources are not widely recognized by small business owners, and there is not a single source on which the small business owner can depend to find this information.
- Some legislators and small business owners have told our commission that they believe Kentucky has devoted major dollars into recruiting businesses to the state, but has not balanced these fund commitments with financial assistance to make small existing businesses successful.
- Small businesses find Kentucky's tax system to be unnecessarily complex and costly with more than 60 state taxes affecting small businesses in addition to federal, city, county, school and special district taxes. Of greatest concern are the property taxes on intangibles and inventory. Compliance with each of these taxes is burdensome and expensive for small businesses. The two taxes are also difficult for the Revenue Cabinet to administer and collect. The tax on inventory is especially burdensome because inventory, which may never be sold and may have little market value, is taxed. In fact, a small business may actually lose money in a particular year, but must still pay tax on its inventory. The tax on intangibles generates approximately \$22 million per year while the tax on inventories about \$6.4 million to the state (about \$86 million to local taxing jurisdictions). Thus, the state receives less than \$30 million from these two property taxes that create tremendous record keeping and tracking burdens for small businesses. KCSBA recommends abolishment of both the intangibles and inventory taxes at the earliest date that the state can afford to do so.
- The Enterprise Zones, which have provided much needed tax relief assistance are scheduled to be abolished in 2003-2004.
- Kentucky has the seventh highest unemployment tax in the nation.

¹⁹ "Small Business Survival Index 2001: Ranking the Policy Environment for Entrepreneurship Across the Nation", Raymond J. Keating, Chief Economist, Small Business Survival Committee, July 2001.

²⁰ Small Business Administration 1999 statistics.

²¹ U.S. Bureau of the Census, County Business Patterns, 1999, Kentucky.

Appendix 9 - Access to Capital: Taxation and Financial Incentives – continued

While we were encouraged by the Governor's Economic Development Legislative Package²² as described in his January 29, 2002 press release, and the Kentucky Strategic Plan for Economic Development 2002-2006²³, we are concerned that it does not specifically address the sole proprietor or the business with less than 20 employees.

Recognizing that small business is a large and crucial element of the nation and the state's employment and revenue, the KCSBA is committed to encouraging the development of easily accessible information, the equitable distribution of dollars, and the simplification of Kentucky Tax Law and related record keeping requirements as they relate to small business. To accomplish these goals we will work toward securing:

- The development of a streamlined program of state taxes, and a contact procedure that identifies one source of information on taxes and returns to be filed;
- The restructuring of state programs to allow businesses with 1-15 employees to be consider for financial and other assistance consistent with proscribed criteria;
- Distribution of materials to small businesses throughout the state including informational bulletins, tax preparation instructions, circulars and notices to small business taxpayers;
- The creation of a program that will allow small businesses to file comments/complaints about experiences with audits, enforcement and compliance activities without the fear of retaliation;
- The adoption of administrative regulations that establish standards for waiver of penalties after considering good faith efforts by the taxpayer, mitigating circumstances, and ability to pay;
- The standardization of local government forms for occupational license fees and tax returns and filing deadlines. Whenever practical, counties with multiple city governments should enter into agreements with county governments to collect occupational license fees and taxes, allowing small businesses to file only one return if they do business in multiple cities within a county;
- Relief from the intangible property tax. This tax puts an undue hardship on small business, is costly to administer, and generates a relatively small amount of revenue (approximately \$25 million);
- Review of the "distance tax" – 2.85% per mile on trucks transporting goods if licensed in KY. No other state has this tax. Legislation to repeal this tax has been introduced by Sen. Virgil Moore and twice passed the Senate only to die in the House;
- Review of vehicle license and parts and maintenance taxes;
- Review of the repeal of the enterprise zones; and
- Explore the possibility of expanding the use of the Madison eZone model – a nine step process of business development.

The Kentucky Economic Development Cabinet has a variety of financial assistance programs and training.²⁴

The Small Business Survival Index 2001, which measures how state and local governments treat small business and entrepreneurs, ranks Kentucky 32nd in the nation while our neighbor, Tennessee, is rated 10th. The ratings are based on personal and business tax rates²⁵, worker's compensation, utility costs, crime rate, right to work status, minimum wage, and state and local government to civilian employment ratios. The top 15 states were also ranked based on their policy environments. Kentucky was not among them.²⁶

The KCSBA is committed to improving the factors that comprise that rating to make Kentucky a better place for our existing small businesses and attract more small business to the state.

²² <http://gov.state.ky.us/legislativeinits/2002/2002.htm>

²³ www.edc.state.ky.us/kyedc/pdfs/kystrategic.pdf

²⁴ <http://smallbusiness.state.ky.us>

²⁵ A listing of Major Business Taxes in Kentucky may be found at <http://www.edc.state.ky.us/kyedc/biztax.asp>

²⁶ "Small Business Survival Index 2001: Ranking the Policy Environment for Entrepreneurship Across the Nation", Raymond J. Keating, Chief Economist, Small Business Survival Committee, July 2001, www.sbsc.org/Media/pdf/SBSI2001.pdf.

APPENDIX 10

SBA Report: Impact of Regulatory Costs on Small Firms

"To comply with federal regulations, American spent \$843 billion in 2000. Had every household received a bill for an equal share, each would have owed \$8,164. That bill would be in addition to the \$19,613 share for each household contributes to federal revenues through taxes."

"Environmental regulations and the paperwork burdens of tax compliance are particularly disproportionate in hitting small businesses. (*The Impact of Regulatory Costs on Small Firms*, Office of Advocacy, www.sba.gov/advo/)."

Table 1: The Incidence of Federal Regulations by Firm Size, All Business Sectors*

Type of Regulation	All Firms	Cost per employee for firms with		
		<20 Employees	20-499 Employees	500+ Employees
All Federal Regulations	\$4,722	\$6,975	\$4,319	\$4,463
Environmental	\$1,213	\$3,328	\$1,173	\$717
Economic	\$2,065	\$1,616	\$1,648	\$2,485
Workplace	\$779	\$829	\$873	\$698
Tax Compliance	\$665	\$1,202	\$625	\$562

*Note to Table 1: These aggregate cost data use employment shares to weight the respective business sectors. The estimates are for 2000 and are denominated in 2000 dollars.

Considering all federal regulations and all business sectors, regulations costs firms with fewer than 20 employees nearly \$7,000 per employee per year. Regulations compliance costs medium size firms about \$4,300 and large firms \$4,500 per year per employee. Costs per employee thus appear to be 55 to 60 percent higher in small firms than in medium-size and large firms.

This report details the distribution of regulator costs for four major business sectors: Manufacturing, Trade (wholesale and retail), Services, and Other (a residual containing all other enterprises). The findings reveal that the disproportionate cost burden on small firms is particularly stark for the manufacturing sector. In that sector the cost per employee for small manufacturers is more than double the cost for medium-size and large firms. In the trade sector (wholesale and retail businesses) the regulator cost differential between small businesses and the larger-size firms is not nearly so large, in the range of 11 to 18 percent. A disproportionate share of the regulatory burden is put on small firms in the other major sectors falls somewhere between these two cases.

Federal Initiatives to Reduce Regulatory Burdens

Small business is the engine that drives our national economy and it is incumbent upon us to eliminate the burden of over regulation on small businesses. As such, President Bush has made regulatory fairness one of the cornerstones of his small business agenda.

The Small Business Administration's Office of Advocacy recently published a report titled "*The Impact of Regulatory Costs on Small Firms*". In order to comply with Federal Regulations, American businesses spent \$843 billion in 2000. Every year federal regulations cost small businesses of 20 employees or less almost \$7,000 per employee, 60% more than the cost to a large business. Moreover, these costs do not include compliance with state and local regulations.²⁷

Eliminating burdensome federal regulations and inequitable enforcement tactics is critical to the growth of the small business community and the stability of our nation's economy. Reducing regulatory impediments allows entrepreneurs to use their time and money running their businesses rather than spending their limited resources trying to comply with unfair and unnecessary regulations and enforcement tactics.

In March of 2002, President Bush announced his Small Business Plan²⁸, promising to tear down the regulatory barriers to job creation for small business and give small business owners a voice in the complex and confusing federal regulatory process. Research shows small businesses create close to 75% of the net new jobs and adding more regulations to overburdened small businesses impedes economic growth.²⁹

On August 15, 2002, President Bush delivered on a major piece of his Small Business Plan by signing Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking,³⁰ that requires federal agencies, when writing new rules and regulations, to implement policies protecting small businesses. The order requires all federal agencies, including independent agencies, to submit within 90 days to the Office of Advocacy of the U.S. Small Business Administration (SBA) their plans on how they account for small business in their rulemaking process. Agencies have 180 days to execute these plans and must consider the Office of Advocacy's comments on their effectiveness before their implementation. This Executive Order will have a direct and very positive impact on small businesses.

The Small Business Administration (SBA)

The SBA is best known for its programs of financial and federal contract procurement assistance, management assistance, and specialized outreach to women, minorities and armed forces veterans. Management assistance to existing small businesses and entrepreneurs wanting to start a new business is found through Small Business Development Centers (SBDC). The SBA also provides loans to victims of natural disasters and specialized advice and assistance in international trade.

Nearly 20 million small businesses have received direct or indirect help from one or another of those SBA programs since 1953, as the Agency has become the government's most cost-effective instrument for economic development. In fact, SBA's current business loan portfolio of roughly 219,000 loans worth more than \$45 billion makes it the largest single financial backer of U.S. businesses in the nation.³¹

The Small Business Administration also has two other very important programs: The Office of Advocacy and the Office of National Ombudsman. The Kentucky Commission on Small Business Advocacy is modeled after these two SBA agencies.

²⁷ <http://www.sba.gov/advo/research/rs207tot.pdf>

²⁸ <http://www.whitehouse.gov/infocus/smallbusiness/regulatory.html>

²⁹ President Unveils Small Business Plan at Women's Entrepreneurship Summit, March 19, 2002, <http://www.whitehouse.gov/news/releases/2002/03/20020319-2.html>

³⁰ <http://www.sba.gov/advo/laws/eo13272.pdf>

³¹ 49 Years of Service to America's Small Business: The US Small Business Administration, 1953-2000, www.sba.gov/aboutsba/sbahistory.pdf

Appendix 11 - Federal Initiatives to Reduce Regulatory Burdens - continued

Office of Advocacy³²

Congress, recognizing that small business needed a voice in policy deliberations that included but also transcended financial issues to offset that of big business lobbyists, established the Office of Advocacy in 1976 within the U.S. Small Business Administration, to be an independent voice for small business in the formulation of public policy throughout the federal government. The Office is headed by a Chief Counsel appointed by the President from the private sector and confirmed by the Senate. The office of Advocacy is divided into three divisions.

Office of Economic Research - is the federal government's lead office in analyzing the role and status of small businesses in the economy. This office is the source for small business statistics gathered from various federal sources and presented in user-friendly formats. Internal staff or contractors conduct research to help determine small businesses' impact on the economy and how they are currently faring. The Office of Economic Research also puts a face on small business by portraying the characteristics of businesses, owners, and their work forces.

Office of Interagency Affairs - pursues regulatory, legislative, and other policy initiatives that support small business growth. The office prepares comment letters and testimony on federal proposals that may affect small firms. Interagency Affairs addresses issues and concerns shared by small businesses and specific industries. These include access to capital, burdens of regulatory compliance, tax policies, and costs associated with telecommunications reform.

Office of Information - provides Advocacy's outreach to the small business community. The office ensures that the views of small firms and their representatives are heard by the Chief Counsel. Collaborating with other Advocacy offices, the Office of Information shares details about economic research, policy analyses, and Advocacy initiatives with Congress, the White House, federal regulators, state policy makers, small business representatives, and the media.

Office of the National Ombudsman (ONO)³³

Congress created the Office of the U.S. Small Business Administration Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) in 1996 to give small businesses a voice in the federal regulatory enforcement process. The National Ombudsman conducts hearings across the country to receive comments from small business concerns on how federal agencies treat small business concerns during a regulatory enforcement or compliance action. These comments are then transmitted to the appropriate federal agency so that the agency can respond to the small business' comment and take appropriate action.

The National Ombudsman also coordinates the activities of ten (10) Regulatory Fairness Boards (RegFair) comprised of 50 independent business owners or officers of small businesses from throughout the country. The RegFair Board members are appointed by the SBA Administrator, and one of the primary roles of the RegFair Board is to serve as state and regional liaisons to the National Ombudsman in an effort to reduce and indeed remove unfair and unnecessary regulatory impediments to small business growth. Robert G. Clark, Chair of the KCSBA, was one of the first 50 small business owners appointed and has been a Regulatory Fairness Board member representing Kentucky since 1997. He has also served as the first Chair of Region IV and Vice Chair.

Easing the regulatory stranglehold on small businesses is a major component of President Bush's small business agenda. Federal regulations affect small business disproportionately. In fact, per employee, small firms spend almost double that of large firms to comply with federal regulations. The Office of National Ombudsman (ONO) strives to simplify the federal regulatory process so that America's entrepreneurs can spend their much needed resources on their business and customers rather than trying to comply with the burdensome enforcement of complex and confusing federal regulations.

Statutory Authority

The ONO was created pursuant to the Small Business Regulatory Enforcement and Fairness Act (SBREFA). By statute, the ONO is an independent, impartial, and confidential agent, who receives comments from small business concerns regarding their treatment during federal regulatory enforcement actions such as audits, inspections, fines or penalties. These comments are then sent to the Federal agency that initiated the enforcement action for their response. These comments and the federal agency response are collected, analyzed and made part of a report to Congress. The annual report rates federal regulatory agencies on how they treat

³² <http://www.sba.gov/advo/>

³³ <http://www.sba.gov/ombudsman/>

Appendix 11 - Federal Initiatives to Reduce Regulatory Burdens - continued

small businesses during enforcement actions, the timeliness and quality of the agencies' written response to the small business concern, the agencies' response to ONO questions, and what, if any, action an agency took to resolve the small business' comment.

A strong ONO is vital to the nation's 27.5 million small businesses, as this office provides our nation's entrepreneurs with a safe forum to express their views on how the federal government treats them. The ONO listens to small business concerns and works with federal agencies to resolve these concerns in a fair and expeditious manner. The ONO helps keep the American Dream of business ownership alive, instead of being strangled by red tape.

The National Regulatory Fairness Board Meeting

In June 2001, ONO and representatives from the ten RegFair Boards met in Washington, D.C. High-level federal representatives and small business association leaders also attended the conference. The major focus of the conference was a brainstorming meeting that ONO used to develop strategies and goals for the coming year. During the sessions RegFair Board members identified areas of continuing concern. One of the major frustrations for the RegFair Board members was an overall lack of federal agency comprehension of the true cost and burden of their enforcement actions.³⁴

The seven (7) most serious problem areas identified during the sessions were:

1. Overlapping enforcement requirements at the federal, state and local levels;
2. A continuing lack of effective communication by agencies regarding regulations;
3. A fear of retribution and a lack of agency assistance in compliance situations;
4. The disproportionate economic impact on small businesses;
5. Lack of clear channels for small businesses to address their regulatory complaints;
6. Lack of a customer service process/approach at federal agencies; and
7. Inconsistent enforcement activities and shifting compliance requirements.

Legislative Initiatives

H.R. 327, the Small Business Paperwork Relief Act of 2002³⁵

This legislation will institute a process to make paperwork reduction a serious, ongoing effort and introduce measures to make it easier for small businesses to comply with the law. The proposed legislation will:

- require the Office of Management and Budget to publish an annual list of compliance assistance resources available to small businesses in the Federal Register and on the Internet,
- require each federal agency to establish one point of contact to act as a liaison for small businesses and to make efforts to further reduce paperwork requirements for businesses with fewer than 25 employees,
- establish an interagency taskforce to recommend improvements in information collection and dissemination; and
- require each federal agency to report on their enforcement actions against small businesses and penalty reductions in such actions to Congress and the Small Business and Agricultural Regulatory Ombudsman so that they can monitor the regulatory burden reduction efforts of the Agencies.

Hearings Online

ONO posts online transcripts of all RegFair hearings³⁶ The transcripts allow federal agencies, members of Congress, and small businesses to review and systematically address small business concerns and recurring enforcement and compliance issues. In five years, ONO and the RegFair Boards have convened 43 public hearings. Agency participation at these hearings is critical as it increases the dialogue between the agencies and small business concerns. It also allows federal agencies an opportunity to hear directly from small business concerns, address the issues raised, and benefit from input on how to improve their regulatory enforcement and compliance procedures.

³⁴ <http://www.sba.gov/ombudsman>

³⁵ http://www.sbaonline.sba.gov/advo/laws/hr327_02.pdf

³⁶ <http://www.sba.gov/ombudsman>

Appendix 11 - Federal Initiatives to Reduce Regulatory Burdens - continued

Federal Agency Rating Criteria and Recommendations

SBREFA requires the ONO to receive, substantiate and evaluate comments from small business concerns. These comments and a set of standard questions from the ONO are then forwarded to the appropriate federal agencies for their response and appropriate action. The ONO's questions seek additional information from agencies to determine whether regulatory enforcement and compliance fairness is part of the agency's environment. The ONO utilizes these questions to prompt the agencies to consider how the small business owner must comply with regulations. If needed, these questions are modified for a given comment and the level of identity disclosure chosen by the small business concern.

SBREFA requires the ONO to rate federal regulatory agencies on their enforcement and compliance activities, on the timeliness and quality of their response to the small business concern's comment, and on their response to the ONO's questions. The ONO analyzes the agency's implementation of the ONO's annual recommendations.

Several agencies have designated high-level, independent officials to review small business comments. Some agencies have in place or are establishing formal and periodic training for personnel responsible for small business enforcement or compliance activities. They are also working to improve their responsiveness and reduce the regulatory burden.

The 2001 Office of National Ombudsman Annual Report to Congress³⁷ makes specific recommendations and summarizes federal agencies "Best Practices". A recommendation particularly important to Kentucky was:

Equitability Delegated Enforcement Authority

When federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum federal regulatory enforcement fairness standards are met. This includes a flow-down of all federal small business protections and cooperative objectives that guarantee small businesses their rights without the use of costly judicial remedies. Agencies should review and report on state government and other intermediaries' compliance with all applicable federal standards.

³⁷ <http://www.sba.gov/ombudsman>

2001 Office of National Ombudsman Annual Report to Congress

Here are five recommendations from the 2001 Office of National Ombudsman Annual Report to Congress.

Recommendation 1: Increased Voluntary Compliance Reviews

Provided a violation does not involve serious injury or harm, agencies should institute programs that:

1. Give small businesses notice of violations and reasonable opportunities to come into compliance without being penalized, and
2. Increase voluntary compliance reviews to give businesses the guidance they need without the fear of penalty.

Recommendation 2: Delegated Enforcement Authority Fairly

When federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum federal regulatory enforcement fairness standards are met. This includes a flow down of all federal small business protections and cooperative objectives that guarantee small businesses their rights without the use of costly judicial remedies. Agencies should review and report on state government and other intermediaries' compliance with all applicable federal standards.

Recommendation 3: Disseminated RegFair Information

Federal agencies should use their small business liaison offices to inform small businesses on an ongoing basis about their rights to regulatory fairness. These liaisons should disseminate RegFair information materials in mailings, at offices, and through existing outreach efforts.

Recommendation 4: Reduced Small Business Data Collection

Agencies should review and reduce their small business data collection and reporting requirements and eliminate duplication of requested information. Agencies should also periodically conduct field studies of the actual time small businesses spend complying with their reporting requirements.

Recommendation 5: Provided Alternative Compliance Arrangements

Agencies should establish avenues through which small businesses can expeditiously raise the concern that the enforcement of a compliance action threatens their economic viability. The reviewing entity should have authority to provide for alternative payment arrangements, enforcement or compliance actions, or other arrangements on a timely basis (such as within 30 days). The availability of this avenue should be made clear to small businesses.

Criteria for Grading Federal Agencies for Recommendation 1:

A - Excellent

The agency has policies to notify small businesses of violations when the small business operated in good faith to comply with the agency's rules, no serious harm occurred, and there was no imminent risk of serious harm. Also provides opportunities to achieve compliance in cases where statute(s) does not compel the agency to penalize the small business (if a penalty is required by statute, the agency sets the minimum penalty). The agency also has significant voluntary compliance review programs, which give small businesses the guidance they need to come into full compliance and avoid penalties; and takes steps to notify small businesses of these programs.

B - Good

The agency has:

- Implemented item 1 or item 2, detailed above; and
- Committed to implementing, within 12 months, the item not yet in place.

C - Average

The agency has either:

- Committed to implementing, within 12 months, both item 1 and item 2; or
- Already implemented one of the two items but will not commit to implementing the other.

F - Unsatisfactory

The agency either has not:

- Implemented the above recommendation; or
- Provided sufficient information to determine whether the recommendation will be satisfactorily implemented.

Agency Best Practices

Several federal agencies have adopted innovative approaches to make their enforcement and compliance efforts fairer and friendlier to small businesses. These innovations are impressive, and ONO and the RegFair Boards believe that both small business advocates and additional federal agencies will benefit from learning about these improvements.

Department of Agriculture - Animal and Plant Health Inspection Service - Innovative Penalty Agreements

APHIS uses innovative agreements to encourage compliance rather than assess strict penalties. In many animal care cases the penalty may be returned to the small business to spend on improving facilities. Other innovative compliance agreements may include refunding fines for employee training, or research into improved methods.

Department of Labor - Mine Safety and Health Administration

Compliance Guide to Assist Mine Operators with Subcontractor Safety Training Programs

Mine operators are now provided with compliance guides and assistance to avoid penalties for subcontractor violations. This program came about as a direct response to a SBREFA comment. MSHA responded with the development and rollout of a compliance program in only a few months. The program will result in improved safety and more cooperative workplace safety environment.

Environmental Protection Agency

National Compliance Assistance Clearinghouse

Last year, EPA launched an Agency Internet "Clearinghouse" where entities, including small businesses, can obtain documents and data links to a variety of federal, state and local environmental compliance resources. It provides quick access to compliance tools, contacts, and planned activities from across EPA as well as other compliance assistance providers. The Clearinghouse currently links to over 4,700 documents and is expanding to include compliance assistance materials from non-governmental assistance providers.

Compliance Assistance Centers

EPA is developing three more Compliance Assistance Centers, in partnership with industry and other groups and agencies, to address real world issues and options for addressing environmental compliance. These centers address small business sectors and will be in the areas of Auto Salvage yards, the construction sector, and US/Mexican border issues with respect to the imports and hauling of hazardous waste. The centers provide a valuable resource for small businesses to learn how to comply with environmental regulations and learn about upcoming rules and policy changes. The centers consolidate all the compliance information related to a particular industry to allow one-stop shopping in order to get the information necessary to comply with the law, with the ability to access the information by phone, fax, mail and e-mail. The Centers are an example of a successful small business-agency partnership that benefits everyone involved.

EPA Small Business Policy/Not Applicable Small Business in Kentucky

The Environmental Protection Agency (EPA) delegates almost all of its enforcement and compliance activities to the Natural Resources & Environmental Protection Cabinet in Kentucky. EPA also delegates the same authority to other states in varying degrees and each state is different. In some states, EPA retains its enforcement and compliance authority in certain areas.

The Small Business Regulatory Fairness Enforcement Act (SBREFA) requires all federal agencies to have a small business policy regarding the "waiver and reduction" of penalties. EPA has a small business policy but this policy does not apply because Kentucky's environmental laws are enforced at the state level. This puts Kentucky small businesses at a competitive disadvantage as compared to other small businesses in states that are regulated directly by EPA on some environmental laws and regulations.

Five years ago, EPA reorganized its compliance programs. This reorganization was undertaken with a goal of making EPA's enforcement and compliance programs more effective in protecting public health, safety and the environment. The reorganization also improved and enhanced EPA's ability to reach out to small businesses with information to help them comply with environmental requirements.

The KCSBA encourages the Natural Resources and Environmental Protection Cabinet (NREPC) to follow EPA's lead and adopt administrative regulations or support legislation consistent with EPA's compliance policies.

Background and History

EPA issued two incentives policies in 1995 and 1996. The "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," informally known as the "Audit Policy," was issued in December 1995. The purpose of the Audit Policy, which is available to entities of any size, is to enhance protection of human health, safety and the environment by encouraging regulated businesses to voluntarily discover, promptly disclose, expeditiously correct and prevent violations of federal environmental law.

To address the special needs of small businesses, EPA issued the "Policy on Compliance Incentives for Small Businesses," which is commonly called the "Small Business Policy," in June 1996. The term "small business" will be used throughout this Policy, and refers to businesses with 100 or fewer employees ("audit policy and small business policy herein will be referred to as EPA's compliance policies"). EPA will waive or reduce civil penalties whenever a small business makes a good faith effort to comply with environmental requirements by discovering violations as part of a government sponsored compliance assistance program or a voluntary environmental audit, promptly disclosing those violations, and correcting them in a timely manner. If the small business meets all the criteria in the policy, including violation history, correction timeframe, and lack of harm, EPA will waive 100% of the gravity component of the civil penalty.

The Small Business Policy provides penalty reduction as an incentive for small businesses, less likely than large businesses to have sophisticated environmental expertise, to ask for compliance assistance. This policy was also simpler for small businesses to use. The Small Business Policy applies only to violations discovered through audits and during government sponsored on-site compliance assistance activities. The Small Business Policy provides up to 100% reduction of the gravity component of the penalty for violations discovered either through regular audits or during government sponsored on-site compliance assistance activities. Finally, the period within which violations must be corrected is different.³⁸

Under the Small Business Policy, a business must generally correct a violation within 180 days of its discovery to qualify for penalty reduction, and within 360 days if the correction involves pollution prevention modifications.

³⁸ US Environmental Protection Agency, Small Business Compliance Policy,
<http://www.epa.gov/compliance/resources/policies/incentives/smallbusiness/sbcp2000.pdf>

Expanded Options for Discovery of Violations

Comments submitted to EPA suggested that this Policy should be expanded to include violations that are discovered by a variety of compliance assistance activities, including participation in compliance programs or the use of tools that have been developed or sponsored by EPA, the States, and local, private and non-profit assistance providers. Based on its evaluation of those comments, EPA has decided in the revised Small Business Compliance Policy³⁹ to allow small businesses to obtain penalty relief if violations are discovered by any voluntary means in addition to discovery as the result of government sponsored on-site compliance assistance activities or environmental audits. For example, voluntary discovery could result from compliance management systems (CMSs), pollution prevention assessments, participation in mentoring programs, training classes, use of on-line compliance assistance centers, and use of checklists.

These programs and activities need not be associated with environmental regulatory agencies, but may be associated with any public, private, or non-profit organization. The Agency wants to encourage participation in those programs or activities that could increase compliance, improve efficiency, and reduce pollution. There are a variety of activities and sources of information that a small business can use to learn more about environmental regulatory requirements. EPA and the States provide various forms of compliance assistance. Some State assistance programs are run as confidential services to the small business community. If a small business wishes to obtain a corrections period under this policy after receiving compliance assistance from a confidential program, the business must promptly disclose the violations to the EPA or the State or Tribal government agency which is applying a similar policy and comply with the other provisions of this Policy.

Environmental/Human Health Improvements Resulting From EPA's Compliance Policies

Use of EPA's compliance policies has resulted in overall benefits to human health and the environment. When companies voluntarily detect and correct violations in order to take advantage of the Policy, they remove harmful pollutants from our air, ground and waterways, reduce the likelihood of chemical spills and accidental releases, improve public information regarding potential environmental hazards, and ensure safe management of hazardous chemicals and wastes.

Hundreds of violations have been disclosed and have been or are being corrected involving deficiencies in monitoring/sampling, reporting, labeling, manifesting, record keeping, testing, training, and production requirements. Benefits that result from the detection and correction of these types of violations accrue in the form of risk reduction.

Prompt Disclosure and Correction of Violations

The results to date under the EPA Compliance Policy indicate widespread use. As of March 1, 1999, 455 regulated entities had identified and disclosed violations at approximately 1850 facilities. The rates of disclosing entities and disclosed violations have increased every year since the effective date of the Policy. In 1995, the first year of the final Policy, 46 entities disclosed violations at 49 facilities. In 1996, 72 entities disclosed violations at 105 facilities. In 1997, 90 entities disclosed violations at 568 facilities. In 1998, 96 entities disclosed violations at 927 facilities.⁴⁰

As of April 30, 1999, EPA had granted penalty relief under the Policy to 166 entities involving approximately 936 facilities, including 131 instances in which no monetary penalty was assessed and 19 instances in which gravity-based penalties were mitigated by seventy five percent.⁴¹

Most of the disclosures under the EPA Compliance Policy involve reporting and monitoring types of violations of federally run programs. Eighty-four percent of the violations disclosed are reporting, monitoring/sampling, labeling/manifesting, record keeping, testing, training and production violations. Sixteen percent of violations disclosed are unauthorized releases and violations of storage/disposal/container management, permit application, and re-mediation requirements. These percentages appear to reflect the high percentage of regulations for reporting, monitoring and record keeping. Ninety-one percent of violations disclosed were violations of programs administered by EPA and not by the states.

³⁹ US Environmental Protection Agency, Small Business Compliance Policy,
<http://www.epa.gov/compliance/resources/policies/incentives/smallbusiness/sbcp2000.pdf>

⁴⁰ US Environmental Protection Agency, Small Business Compliance Policy,
<http://www.epa.gov/compliance/resources/policies/incentives/smallbusiness/sbcp2000.pdf>

⁴¹ US Environmental Protection Agency, Small Business Compliance Policy,
<http://www.epa.gov/compliance/resources/policies/incentives/smallbusiness/sbcp2000.pdf>

Comments from Business Using EPA's Compliance Policies:

- "Companies can avoid penalties for doing the right thing. And everyone wins."
- "It enhances compliance, environmental performance and de-polarization of regulators and the regulated community."
- "Very good experience. It allowed the facility to proactively respond to address a compliance issue quickly without delays related to traditional command-and-control enforcement."
- "Created a partnership of trust between regulator and reporting regulated entity."
- "Ability to find, report, and correct issues in a cooperative or partnering role with EPA."

"Wavier of Penalties" Provisions in The Clean Air Act

The Kentucky Business Environmental Assistance Program (KBEAP) offers free and completely confidential air-quality environmental consultations to Kentucky businesses with less than 100 employees. Small businesses that discover they have a Clean Air related environmental regulatory compliance problem gets assistance from KBEAP to fix the problem. The Natural Resources and Environmental Protection Cabinet (NREPC) will waive the non-compliance penalties of the small businesses if they work with KBEAP and resolve their compliance problem.

KBEAP is one of fifty state Small Business Assistance Programs mandated by the Clean Air Act. EPA recently testified before Congress and said ". . . that 75% of the state programs are now provide multimedia (water and waste) compliance assistance.⁴² The Kentucky Small Business Development Center now provides water and waste compliance assistance. However, the NREPC will not waive the penalty as they do with clean air. The cabinet's position is that the Clean Air Act clearly mandates this relief for small business but there is no federal mandate for waste and water.

The commission believes that the Regulatory Flexibility Act (RFA), the Small Business Regulatory Enforcement Act (SBREFA), EPA's Small Business Policy and President Bush's recent Executive Order clearly shows the intent of Congress to provide regulatory relief to small businesses in appropriate circumstances. The Commission believes that the Cabinet's discretion to fine a violator up to \$25,000 for violating a Kentucky environmental regulation. This statute than gives the Cabinet the authority to fine only \$1 for small businesses that work with a state-approved compliance assistance program and in essence waive the penalty under appropriate circumstances.

⁴² Benforado, Jay, Deputy Associate Administrator, EPA Office of Policy, Testimony before Senate Small Business Committee August 2001"

State Agency Responses to KCSBA Annual Report

MEMORANDUM

TO: Kentucky Commission on Small Business Advocacy

FROM: Cabinet for Economic Development

DATE: February 7, 2003

SUBJECT: KY Commission on Small Business Advocacy

We have reviewed the final draft of the 2002 Annual Report of the KY Commission on Small Business Advocacy and offer the following comments:

Page 4, Paragraph 3 – Includes an inaccuracy in stating: “Most state assistance and tax incentives programs are available only to businesses with over 50 to 500 employees.” In fact, our technical and financial assistance to businesses includes start-up's, i.e. with no employees. During 2002 alone, our Department of Community Development handled thousands of business inquiries from businesses of all sizes, and assisted 19 start-up projects through the Cabinet's financial incentive programs. A review of projects receiving financial incentives for the two-year period from October 1999 through September 2001 shows successful use of these programs with:

- 46 businesses with 1-50 employees,
- 30 businesses with 51-100 employees,
- 27 businesses with 101-500 employees, and
- 15 businesses with 501 or more employees.

Many Economic Development Cabinet programs include a minimum threshold of \$100,000 capital investment and 10 to 15 new jobs over two years. The programs do not discriminate on the size of businesses that can apply, but they do require a minimum economic impact to justify the use of state tax credits.

Page 8, Paragraph 1 – Recommendation 4 suggests a new Economic Development Cabinet financial incentive program for “very small businesses” with a quota of 10% of all companies approved over two years and 25% of all companies approved over 5 years. Rather than qualify on the basis of net new jobs and capital investment, the recommended measures would include increased efficiency, a percentage increase in new jobs, and an increase in production capabilities.

The establishment of quotas for certain types of businesses would create an “entitlement” aspect to the Cabinet's financial incentive programs. This is contrary to the Cabinet's approach of using incentives that are “reasonable and necessary” to cause desirable business investment to occur. The existing programs are designed to attract new capital investment, and more wealth creation into Kentucky, not to provide a tax break for regular retooling that all businesses may face. If any size business is not adding jobs and payroll, it is not creating a sufficient economic impact to justify the foregoing of state and local tax revenues.

Page 9, Paragraph 1 – Recommendation 6 recognizes that economically depressed areas of the Commonwealth have special needs that may require unique incentive programs. However, this section recommends only the extension of the Enterprise Zone program, which has only ten locations in the state. This section should also take notice of the Economic Opportunity Zone program, which applies to eleven urban areas and the 70+ KREDA-eligible rural counties; the Local Government Economic Development Fund, which applies to 40+ coal producing counties; and the KREDA program itself. A variety of incentive programs have been created to deal with different kinds of economically distressed areas, and all are worthy of the attention of the Commission.

Page 32, Appendix 9 – This summary discussion on Economic Development Cabinet programs and financial incentives includes complimentary comments on the Business Information Clearinghouse and the Small and Minority Business programs (second bullet). Unfortunately, the third bullet states, incorrectly, that “Kentucky has devoted major dollars into recruiting businesses to the state, but has not balanced these fund commitments with assistance to make small existing businesses successful.” The absence of a stated source of this financial claim is telling.

Appendix 14 - State Agency Responses to KCSBA Annual Report - continued

In fact, the Community Development Department, which works with existing and start-up businesses, including the Clearinghouse, Small & Minority Business, and Trade programs, has twice the staff of the Business Development Department, which works with business recruiting. The majority of projects approved by KEDFA for financial assistance come from the existing and start-up business side of the Cabinet.

Summary

The amount of incorrect information in this draft document regarding Economic Development Cabinet programs is a concern. It raises the question of the degree of serious attention paid by the Commission to the programs and activities of the Economic Development Cabinet. It would be a disservice to base the discussion of creating additional business incentive programs on this level of analysis.

Governor's Office of Technology Review of Annual Report

Our office has reviewed your annual report we do not have any comments to submit.

**Natural Resources and Environmental Protection Cabinet
Comments on Final Draft - December 2002**

Introduction

The Natural Resources and Environmental Protection Cabinet (NREPC) commends the Kentucky Commission on Small Business Advocacy for their work during the 2001-2002 biennium to examine regulatory issues that small businesses face in the Commonwealth. The Cabinet appreciates the opportunity to comment on the final draft report.

The comments will address the following:

- NREPC's inability to support Recommendations 5 and 11
- NREPC's inability to support the proposed definition of small business
- Inaccurate characterization of the NREPC's enforcement procedures
- Support for Small Business Internet Portal/Online Help Desk Project
- Lack of justification to support savings from internet portal; and
- Lack of acknowledgement of societal benefits of environmental regulation

Recommendation 5

Of most concern to the NREPC are Recommendations 5 and 11. In Number 5, the Commission recommends passage of legislation that would require all state agencies that regulate small businesses and have the authority to assess civil penalties to adopt administrative regulations that would provide the reduction or the waiver of civil penalties for a small business entity with fewer than 100 employees. In addition, Number 5 recommends that the Legislature require state agencies to issue a pre-notice of violation to small businesses and allow a reasonable time for corrections to be made prior to issuing a Notice of Violation (NOV).

The NREPC is concerned that the Commission has made these recommendations without full consideration of the federal laws and program requirements with which the Cabinet must comply in order to implement programs delegated by the U.S. Environmental Protection Agency and the U.S. Office of Surface Mining. The provisions of Recommendation 5 would be in direct conflict with federal program delegation requirements. For this reason the NREPC cannot support Recommendation 5.

In addition, in Recommendation 5, the Commission directs all state agencies to provide for the reduction and waiver of civil penalties, however the NREPC is the only state agency that is directed through another recommendation (#11) on how to comply with Recommendation 5. The Commission has not provided a credible basis for treating the NREPC differently than other state agencies by telling it how to implement Recommendation 11.

Recommendation 11

In Number 11, the Commission recommends that the NREPC follow EPA's lead and adopt administrative regulations or support legislation consistent with EPA's model for small business compliance plans.

Problems with Proposed Definition of Small Businesses

Among the NREPC's concerns is the proposed definition of a small business, which includes all businesses with 100 or fewer employees in this context. This definition is inconsistent with other definitions and is unworkable for the NREPC because it does not consider the environmental impact or financial capability of a facility when requiring reduction or waiver of penalties. It also has the potential to include most of Kentucky businesses.

The Commission often speaks of federal programs and initiatives to deal with small businesses. In Recommendation 11, the Commission recommends that the NREPC follow EPA's lead and adopt administrative regulations or support legislation consistent with EPA's model for small business compliance plans. Under the requirements of the 1990 Clean Air Act Amendments, which put in place a federally mandated Small Business Assistance Program, a more limiting definition of a small business is used. This definition, in addition to 100 or fewer employees, also requires that a small business may not be a major source for criteria pollutants. Many businesses with fewer than 100 employees can still be classified as major sources and thereby have additional requirements under the Act and may not be eligible for free technical assistance. In addition under this Act, businesses with a hundred employees or less cannot be part of a larger, parent umbrella and still receive the same benefits as an independent small business. For example, a coal terminal may employ less than 100 employees, however it would not qualify for assistance if it were part of an "overall" larger corporation.

Inaccurate characterization of NREPC's enforcement procedures

The report also refers to excessive and inconsistently applied enforcement tactics. The NREPC has implemented measures over the years to see that enforcement procedures are implemented in a uniform manner across the state. These measures have been enhanced by the Empower project.

Protecting public health and the environment and achieving compliance with the statutes and regulations the Cabinet is responsible for administering are the impetus for NREPC enforcement decisions. NREPC has numerous tools available to aid with compliance and enforcement issues. Among these are technical and compliance assistance, verbal notices, inspection reports, warning letters, as well as Notices of Violation that are resolved without financial penalty. These tools are already in use in a measured approach based on the environmental severity and frequency of violations. One of the goals of any regulatory process is to ensure that a level playing field is maintained. Environmental protection, protection of public health and safety and worker safety become part of the cost of doing business for all businesses.

The issue of how states who have been delegated federal program authority are to carry forward special policies and provisions in these programs for small businesses is still under debate. This is indicated by Recommendation 2 of the 2001 Office of National Ombudsman Annual Report to Congress/Agency Best Practices. This recommendation states "When federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum federal regulatory enforcement fairness standards are met. This includes a flow down of all federal small business protections and cooperative objectives that guarantee small businesses their rights without the use of costly judicial remedies. Agencies should review and report on state government and other intermediaries' compliance with all applicable federal standards."

The experience of the NREPC with the small business policies of the EPA indicates that this recommendation is still pending, complicating the adoption of the EPA Small Business Policy. At this time, EPA Headquarters and Region IV do not agree on the interpretation or implementation of the Small Business Policy. The NREPC cannot support the Commission's Recommendation 11 that it adopt the EPA policies on small business compliance plans.

Support for Small Business Internet Portal/Online Help Desk Project

The NREPC supports the overall concept of a small business internet portal/online help desk. This type of system could be an effective method of providing small businesses easier access to databases, reference material and links to government agencies.

Although the NREPC supports the Portal Project, it does challenge the validity of some of the estimated cost savings. The NREPC takes issue with the use of cost figures for administering environmental regulations in the Return on Investment (ROI) analysis presented in Appendix 4. The NREPC acknowledges there are costs to administer regulatory programs. However, there is no justification to support the decline in NREPC costs due to implementation of the on-line system. This leads to overstatement of savings.

Lack of Justification to Support Savings from Internet Portal

Other categories that the NREPC does not think have been adequately justified are:

- Savings due to decreased NREPC litigation time
- Savings due to decreased NREPC administrative hearings

The lack of justification for these categories also leads to overstatement of savings from the Internet Portal Project.

Lack of Acknowledgement of Societal Benefits of Regulation Missing

The NREPC is compelled to note that there is no acknowledgement of the societal benefits of environmental regulation in the report. To the contrary, environmental regulation is described repeatedly as burdensome. These regulations were put in place to provide health benefits to society and to protect the country's natural resources. They were developed and implemented over time with the involvement of people from many different viewpoints. The NREPC recommends that these benefits be acknowledged and considered by the Commission in its deliberations.

Conclusion

In closing, the NREPC recognizes the mission of the Commission on Small Business Advocacy. Based on the experience of NREPC employees, NREPC also recognizes the difficulty of your mission.

The NREPC looks forward to working with the Commission on Small Business Advocacy to assist small businesses, within the legal boundaries of the NREPC mandate to protect human health and the environment as stated in KRS Chapter 224.

Public Protection and Regulation Cabinet Response to Kentucky Commission on Small Business Advocacy Annual Report

Recommendation 5

Many small business owners are simply unaware that certain actions violate administrative regulations/statutes. The SCSBA recommends passage of legislation that would require all state agencies that regulate small businesses and have the authority to assess civil penalties to adopt administrative regulations, which would provide for the reduction or the waiver of civil penalties for a small business entity with fewer than 100 employees. In addition, the Legislature should require state agencies to issue a pre-notice of violation to small businesses and allow a reasonable time for corrections to be made prior to issuing a Notice of Violation (NOV).

The above-referenced legislation, House Bill 108, has been introduced for review by the 2003 General Assembly. For all practical purposes, this concept would shift the burden of compliance from the licensed business entity to the regulating agency. This greatly diminishes the incentive for the business entity to know the law and comply with it. This, in turn, diminishes the agency's ability to protect the consumer.

Regulatory agencies would much prefer to answer questions and clear up confusion about statutory or regulatory requirements before a violation takes place and before harm is done. In fact, many agencies offer educational opportunities that licensed businesses are encouraged to use as a preventative measure. When violations do occur, many agencies have the ability to exercise discretion on a case-by-case basis and can take into consideration the level of offense, the licensee's good faith efforts at compliance, and other mitigating factors.

Recommendation 7

Small business can be unduly burdened by new or changes to existing regulations. The KCSBA recommends passage of legislation that specifically requires the inclusion of a Regulatory Impact Analysis to assess the impact of changes to new or existing regulations on very small and micro small businesses with fewer than 100 employees. Changes in the current law comparable to the Regulatory Flexibility Act would give small businesses a more level playing field.

The administrative regulation process is very lengthy and has been carefully designed to give any and all interested parties the opportunity to voice concerns about regulatory content. Concerned persons are invited to appear and give comments at both a notice of intent hearing, which can be held prior to a regulation being published, and a public hearing, which is conducted after the regulation is published. Comments can be submitted orally or in writing; there is not necessarily a need for the commenting party to be physically present. The statutory scheme also requires that the promulgating agency file a statement of consideration detailing comments received and the agency's response to those comments. It would not be economical or efficient to add yet another layer of bureaucracy onto a process which gives ample opportunity for outside input.

Recommendation 8

Many small businesses are subject to multiple occupational license taxes and filings. The KCSBA recommends legislation that requires multiple taxing districts within a county to standardize its occupation license tax fees and returns, to encourage Inter-local Agreements for a single source tax collection for occupational licenses taxes, and to have one form per county.

The coordination of multiple occupational license taxes and filings at the local level is inevitable in light of efforts to partner technology with the need for "one-stop shopping" for businesses. This initiative would be demanding at the local level, as it would involve review and integration of county and city ordinances and fee structures. Because of the diverse needs and populations of cities and counties in the state of Kentucky, there should be some prioritization of areas for this initiative.

Recommendation 10

Many Commissions serving the state are made up of individuals from across the Commonwealth, making a physical presence at regular board meetings a hardship. The KCSBA recommends passage of legislation to amend Kentucky's Open Meeting Laws to allow members of statewide commissions to have full participation in commission meetings by telephone, including voting and for purposes of a quorum. The KCSBA recognizes that a speakerphone should be available at the actual meeting site so the public and media can hear members participating from another location.

In enacting the Open Meetings Act, the General Assembly declared that the formation of public policy is public business and must not be conducted in secret. KRS 61.800. The Act has traditionally been interpreted to mean the public has the right to hear and see public officials discussing public business. This way, the public can observe the demeanor of agency officials as well as hear their comments. It also is a way to ensure the legitimate, active participation of those officials.

Although it may be more time-consuming for individuals to physically attend meetings, the Office of Attorney General and Kentucky courts have held that the right of the public to be informed transcends any loss of efficiency. In all likelihood, video conferencing, which is acceptable under the Open Meetings Act, will become cheaper and more readily available in the near future. The concerns of KCSBA will be greatly alleviated when this happens.

Resources Available to Small Businesses

Small Business Administration - www.sba.gov

The SBA offers a variety of financing options for small businesses. The SBA's assistance usually is in the form of loan guaranties - the SBA guarantees loans made by banks and other private lenders to small business clients. The SBA's 8(a) BD Program is a business development program created to help small disadvantaged businesses compete in the American economy and access the federal procurement market.

The National Ombudsman forwards small business comments regarding excessive federal regulatory enforcement actions, such as repetitive audits or investigations, excessive fines, penalties, threats, retaliation or other unfair enforcement action, and asks federal agencies to review and consider the fairness of their enforcement action.

Small Business Development Centers - www.ksbdc.org

The Kentucky Small Business Development Centers provide the Commonwealth of Kentucky's entrepreneurs and small businesses with the high quality one-on-one management consulting, environmental consulting, educational training, and business resources needed to maximize their growth in today's intensely competitive global economy.

PRO-NET - <http://pro-net.sba.gov/>

Pro-Net is an electronic gateway of procurement information -- for and about small businesses. It is a search engine for contracting officers, a marketing tool for small firms and a "link" to procurement opportunities and important information. It is designed to be a "virtual" one-stop-procurement-shop.

US Business Advisor - www.business.gov

The U.S. Business Advisor exists to provide business with one-stop access to federal government information, services, and transactions. Our goal is to make the relationship between business and government more productive. Use the links on our site to find useful government information on the web.

BusinessLaw.gov - www.businesslaw.gov

BusinessLaw.gov is an online resource guide designed to provide legal and regulatory information to America's small businesses. Because laws and regulations affect every aspect of business strategy, topics covered on the site range from the most basic and crucial, such as choosing a business structure or hiring a lawyer, to highly specialized issues such as e-commerce and exporting. The site also acts as a gateway to federal, state and local information that affects small businesses.

FIRSTGov - <http://first.gov>

Helping businesses from start to finish with tools and more. Business Opportunities, Government Auctions & Sales, E-File Your Taxes, Employer ID Number, Wage Reporting, Small Business Procurement Registry, Subcontracting Opportunities, and File Patents & Trademarks.

KCSBA - <http://csba.state.ky.us>

Aid the small business community in navigating the regulatory process when that process becomes cumbersome, time consuming, and bewildering to the small business community. Small businesses can ask for information or register a complaint about state regulatory enforcement activities.

Economic Development Cabinet - <http://www.thinkkentucky.com>

The "Kentucky Business Guide" will inform you of the basic federal and state licensing and tax requirements for a new business, as well as where to call to determine what you need at the city and county levels. Also included is a list of agencies and services that provide assistance in the areas of financing, business plan development and marketing, as well as resources which sponsor business workshops to help you become a better business person.

One-Stop Business Licensing Program - <http://www.sos.state.ky.us>

Starting a new business can be a confusing process. There are over 1,800 business types and over 600 business licenses required from various agencies at the state level in Kentucky. Entrepreneurs can waste valuable time and resources determining which licenses are required for their particular type of business. The One-Stop Business Licensing Program was developed to cut through the 'red tape' by simplifying this process.

Appendix 15 - Resources Available to Small Businesses – continued

Small and Minority Business Division, <http://www.edc.state.ky.us>

The Small & Minority Business Division assists persons interested in starting or expanding a small business by providing information and appropriate resources through limited counseling and the utilization of modern technology. The Division has been designated by SBA as the State Operator for the ACE-Net Program. This is a nation-wide Internet-based listing service that provides information to angel investors on small, dynamic growing business seeking \$250,000 to \$5 million in equity financing in a systematic and expansive way. The Kentucky Linked Deposit Investment Loan Program is administered by the Division.

Counseling is provided to clients by the Division and for the first 10 months of 2002, more than 1,482 inquiries were received and counseling provided to 642 businesses. The Division's web site is also a very dynamic tool to assist KY Small Businesses and had over 7900 hits in the same time period and over 4600 instructions on writing a business plan were downloaded.

Business Information Clearinghouse, 1-800-626-2250, <http://www.thinkkentucky.com>

The Business Information Clearinghouse offers complete licensing information for opening a business in Kentucky and, in many instances, can provide the actual applications and forms you will need to obtain. The Clearinghouse responds to approximately 20,000 requests for information annually.

Kentucky Procurement Assistance Program, <http://www.edc.state.ky.us/kyedc/proassist.asp>

The Kentucky Procurement Assistance Program (KPAP) provides assistance to Kentucky firms interested in selling their products or services to federal, state or local government agencies. Primary services offered by KPAP are: marketing research and assistance (helping firms identify potential government contracting opportunities through an automated bid match system and access to other specialized databases of information), one-on-one consulting (helping firms understand government contracting rules and regulations, assistance in preparing bids and proposals, etc), and training programs on a variety of topics related to government contracting.

Client firms reported that KPAP assisted in obtaining \$82,000,000 in government contracts and subcontracts during the last state fiscal year.

Regional Economic Development Offices, <http://www.edc.state.ky.us/kyedc/regoffice.asp>

Located in Prestonsburg, Madisonville and Frankfort, the Kentucky Cabinet for Economic Development's three regional divisions uniquely serve Kentucky's existing business base. Their strategic location allows the Regional Development Specialists to become familiar with area businesses, communities and local leaders in economic development. Specialists in the offices offer the following assistance to existing and expanding Businesses in Kentucky:

- Ongoing statewide business visitation program;
- Access to financial and loan incentive programs for job creation and expansion activities; and
- Identification of concerns that may inhibit growth of a company such as infrastructure, environmental, labor, transportation or regulatory issues.

Commonwealth Small Business Development Corporation (CSBDC), <http://www.thinkkentucky.com/kyedc/edbdc.asp>

The Commonwealth Small Business Development Corporation (CSBDC) is an economic development entity created under the auspices of the Small Business Administration (SBA) to foster development. The CSBDC is certified to make SBA 504 loans anywhere in the Commonwealth of Kentucky.

The CSBDC works with state and local economic development organizations, banks, and the SBA to achieve community economic development through job creation and retention by providing long-term fixed asset financing to small business concerns.

Kentucky Small Business Development Centers, www.ksbdc.org

Kentucky's Small Business Development Centers provide the Commonwealth of Kentucky's entrepreneurs and small businesses with the high quality one-on-one management consulting, environmental consulting, educational training, and business resources needed to maximize their growth in today's intensely competitive global economy. With 15 centers located throughout the state, every potential and existing entrepreneur has access to KSBDC's wide range of services.

The Kentucky SBDC is co-sponsored by the US Small Business Administration and the Kentucky Cabinet for Economic Development and is administered by the University of Kentucky and Gatton College of Business and Economics, in partnership with regional universities, community and private colleges and the private sector.

Women's Enterprise Institute at Midway College www.weimidway.org

The Women's Enterprise Institute is Kentucky's only Women's Business Center, funded by the US Small Business Administration. With access to over 100 Women's Business Centers nationwide, the Women's Enterprise Institute readily accesses resources specifically addressing the needs of women entrepreneurs. WEI provides one-on-one counseling and business training in the areas of management, finance, Internet, marketing, and government procurement for women entrepreneurs from start-up to growth. The Women's Enterprise Institute, a public/private partnership between SBA and Midway College, operates in partnership with educational institutions, organizations, resource partners, and businesses throughout Kentucky.

Natural Resources and Environmental Protection Cabinet - Small Business Assistance Programs

The Natural Resources and Environmental Protection Cabinet provides assistance to small business owners in a variety of ways.

Federally Authorized Programs

- **Small Operator Assistance Program** offered by the Department for Surface Mining Reclamation and Enforcement since 1979.
- Authorized by the Federal Surface Mining Act.
- Provides small operators, producing less than 300,000 tons per year, assistance in preparing surface coal mining applications.
- Paid for by funds from the Abandoned Mine Land Fees.
- **Small Business Air Quality Assistance Program** developed by the Division for Air Quality offering assistance since 1994.
- Required by Clean Air Act Amendments of 1990
- Offers air quality technical assistance to small businesses with less than one hundred employees that are not a major source of emissions.
- Funded by the emissions fees paid by air quality permittees.

Department for Natural Resources

The Department for Natural Resources offers programs to assist small businesses with conservation and forestry practices.

Expenses for these programs are covered in a variety of ways including revolving loan funds, cost sharing and registration fees.

Conservation Programs

- Kentucky Conservation Equipment Revolving Fund
- Kentucky Soil Erosion & Water Quality Cost Share Program.

Forestry Assistance Programs

- Forest Resource Utilization Program
- Timber Bridges Program
- Master Logger Program

Cabinet Wide Customer Service Programs

In addition to these specific programs, assistance to small businesses is part of the NREPC's overall customer service focus.

NREPC Website <http://www.nr.state.ky.us>

- NREPC wide web site that provides current information on contact people, registration forms, permit applications, state and federal environmental regulations.
- Provides numerous links to information resources in other state agencies, and federal agencies.
- **Permits coordinator in the Commissioner's Office, Department for Environmental Protection** to assist businesses with permitting questions.
- **NREPC employees** in Regional Offices across the state and in the Central Office **respond to numerous requests for technical assistance.**
- **Use of tiering in drafting regulations.** Tiering refers to establishing different permit requirements for categories of businesses based on characteristics like size, throughput or releases.
- **Use of general permits as a way to simplify the permitting process.** If a category of businesses has the same operating processes or environmental releases, a general permit may be issued. Due to standardization, general permits are issued more rapidly.
- **Self auditing policy**
Opportunity for self-audit, disclosure and waiver of civil penalties under KRS 224.10-040(10)